

**SUPREME COURT OF QUEENSLAND**

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

**Applicants: RAYMOND EDWARD BRUCE AND  
VICKI PATRICIA BRUCE**

**AND**

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

**AND**

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

**Third Respondent: ROGER SHOTTON**

**Intervener: AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

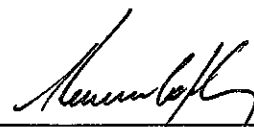
**GINETTE DAWN MULLER**, Chartered Accountant and Official Liquidator, care of FTI Consulting (Australia) Pty Ltd, 22 Market Street, Brisbane in the State of Queensland, states on oath:

1. I am a Chartered Accountant and Official Liquidator. I am a senior Managing Director of FTI Consulting (Australia) Pty Ltd (**FTI**). John Richard Park and I were appointed administrators of the First Respondent (**LMIM**) on 19 March, 2013. I refer to my affidavit sworn 2 May, 2013.

---

**PAGE 1**

  
Signed

  
Solicitor/Barrister/Justice of the Peace

**SECOND AFFIDAVIT OF GINETTE DAWN MULLER**

Filed on behalf of the First Respondent  
Form 46 Rule 431

**Russells**  
Level 21  
300 Queen Street  
**BRISBANE 4000**  
Phone: 07 3004 8888  
Fax: 07 3004 8899

IMC\_20130471\_238.docm

2. I have the principal carriage of the administration of LMIM. I will, in this affidavit, express my opinions or intentions and also opinions or intentions on behalf of Mr Park, as my co-administrator. I am authorised by him to do so.

3. The purposes of this affidavit are to respond to affidavits sworn and filed by the other parties pursuant to directions made on 7 May, 2013, and otherwise to update the First Respondent's evidence since these proceedings were instituted.

4. Now produced and shown to me and marked "GDM15" is an indexed and paginated bundle of documents referred to in more detail in this Affidavit.

5. I propose to deal firstly with the matters that I understand have been advanced by various parties as a basis for removing LMIM as responsible entity for the LM FMI Fund.

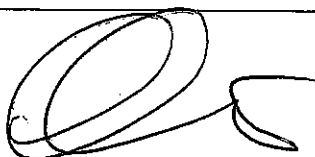
#### **THE APPLICANTS' (AND TRILOGY'S) CONTENTIONS**


##### **The alleged conflicts - General**

6. As I understand the complaints of the Applicants, Mr Shotton and perhaps of other parties, the following are the bases of the contentions that LMIM should be replaced as responsible entity, because of conflicts of duty and interest:-

- (a) The members of the LM FMI Fund may have claims against LMIM, as responsible entity, or its officers (being the claims for which Piper Alderman are advertising a class action) (**the Class Action Claim**);
- (b) The matters outlined in Mr Wood's affidavit (**the Wood Contentions**);
- (c) LMIM is a "debtor" of the LM FMI Fund (**the Debtor Claim**);
- (d) The administrators will face some conflict in adjudicating on proofs of debt at the meeting of creditors, in that they will be "on both sides of the fence" (**the POD Contention**);

PAGE 2

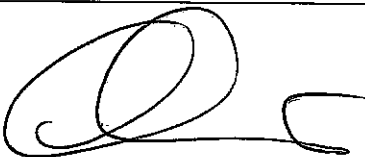
  
Signed

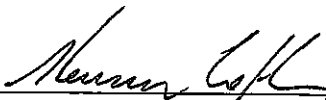
  
Solicitor/Barrister/Justice of the Peace

- (e) There have been dealings with LM Administration Pty Ltd (administrators appointed) (**LM Administration**) (of which Mr Park and I are also administrators) that give rise to claims by the LM FMI Fund against LM Administration (**the LM Administration Contention**).

**The alleged conflicts – the Class Action Claim**

7. Beyond what has been published on Piper Alderman's website, I have no information as to the basis of any claim by the members of the LM FMI Fund. In summary, the mooted class action is said to relate to the "demise of the Fund" and is said to be directed at recovering the losses of members.
8. Also, on 15 April, 2013, I received from our solicitors a draft Amended Originating Application from Piper Alderman, which is at page 1 to 4 of my exhibits. I refer to paragraph 4C thereof in which Piper Alderman foreshadowed an application for inspection of documents of the LM FMI Fund. No previous request in this respect had been made.
9. Mr Park and I are not opposed to such a course. Indeed, as a general proposition, we wish to do what can reasonably and properly be done, to assist the members (or any legal advisors acting for them) to understand any matters in relation the LM FMI Fund, including any rights of action they may have arising from those matters.
10. I therefore instructed Russells to write to Piper Alderman, inviting them to describe the documents they wished to see. I refer to Russells' letters dated 3 May, 2013 and 14 June, 2013 at pages 5 to 7 of my exhibits. The matters of fact in those letters are true. There has been no reply to those letters and no approach from

  
Signed

  
Solicitor/~~Barrister/Justice of the Peace~~

Piper Alderman to me or my firm to arrange any appointment to discuss these matters.


11. However, it is, I regret, necessary to refer to a document circulated to members and advisors by Mr Trevor Gibson of Trilogy under an email dated 17 May, 2013 (produced on subpoena recently – at page 8 to 10 of my exhibits). It states, among other things that:

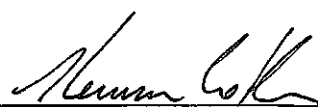
*... LMIM who will not sue themselves or open up the books and loan files for inspection.*

**The alleged conflicts - the Wood Contentions**

12. I refer to paragraphs 23 to 34 of Mr Wood's affidavit. As to those matters:-

- (a) There has been no proposal for a Deed of Company Arrangement, which accords with my expectation set out in my earlier affidavit;
- (b) The practice referred to in paragraph 27 of Mr Wood's affidavit (admitting unparticularised proofs of debt to vote, but only for \$1.00) is, especially at the first meetings of creditors, common;
- (c) There are many occasions in practice when the interests of those who seek to prove to vote at meetings of creditors conflict with the interests of other creditors, such as:-
  - (i) Secured and unsecured creditors;
  - (ii) Directors who are, or claim to be, creditors, and against whom the company may have a claim;
  - (iii) Guarantor creditors whose liability may not have crystallised (e.g. *Re Zambena Pty Ltd*);
  - (iv) Creditors who may have received preferential or other voidable payments;

  
Signed

  
Solicitor/Barrister/Justice of the Peace


- (v) Persons who are creditors in their capacity as a member of a company (so that section 563A of the Act applies);
- (d) On all such occasions, proofs of debt must be considered on their merits;
- (e) In any event:-
  - (i) I took legal advice on those proofs of debt before that meeting;
  - (ii) No person lodged a Proof of Debt claiming damages (or the like) for "breaches of duty in respect of the" LM FMI Fund;
  - (iii) No person challenged any ruling in respect of any proof of debt either at that meeting, or afterwards.

13. As I have explained in detail in paragraphs 34 to 37 my earlier affidavit, I and my firm had no relationship whatsoever with the officers of LMIM, prior to this matter. We have no difficulty in investigating the matters mentioned by Mr Wood, or in pursuing any such claims.

14. Finally and in any event:-

- (a) the imminent meeting of creditors is that which will be conducted under section 439A, to decide the company's future, not for the payment of dividends. The administrators have no interest (that is, no personal or financial interest) in any particular outcome of the meeting, whether for the creditors or members of LMIM, or for the members of the LM FMI Fund;
- (b) My views and intentions, and those of Mr Park remain as explained in paragraphs 41 to 45 of my earlier affidavit; and
- (c) We derive support for the approach we intend to adopt from an article in the November, 2012 Insolvency Law Bulletin, entitled *Lehman Brothers Decisions – the benefits of class actions for liquidators in adjudicating proofs of debt*, of which Ms Banton is the author.

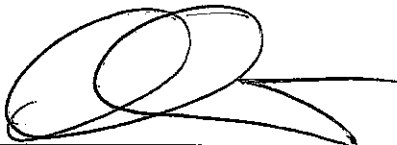
  
Signed

  
Solicitor/Barrister/Justice of the Peace

15. I refer to paragraphs 35 to 45 and 50 to 52 of Mr Wood's affidavit. As to those matters:-

- (a) I make no comment on the legal propositions involved in those parts of Mr Wood's affidavit;
- (b) I have obtained a publication from ASIC's website (at page 11 of my exhibits) and I note that ASIC describes its Regulatory Guides, relevantly, as:-
  - (i) explaining how ASIC interprets the law;
  - (ii) describing the principles underlying ASIC's approach;
  - (iii) giving practical guidance (for example, describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations);
- (c) As I understand Mr Wood's contentions, Trilogy contends that the following matters should be investigated:-
  - (i) whether the alleged amendments of the Constitution of the LM FMI Fund were made by LMIM and its directors in compliance with paragraph 601GC(1)(b) of the Act;
  - (ii) whether transactions subsequently entered into complied with the Constitution;
  - (iii) whether rights of action may exist in the Scheme, or individual members as a result of any such non-compliance or transactions;
- (d) if Trilogy becomes responsible entity, it will investigate those matters.

16. For the reasons mentioned in paragraphs 34 to 37 of my earlier affidavit, Mr Park and I have no difficulty investigating or pursuing arguable and cost-effective



claims against any current or former officers of LMIM. As for the inference that there may be such claims against LMIM itself, I note that it is not suggested that:-

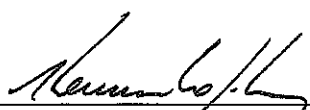
- (a) when the various alleged amendments were made, LMIM did not reasonably consider that the amendment would not adversely affect members' rights;
- (b) any distributions were made to any persons that were distributions other than income;
- (c) any loans were made in breach of the Constitution, as amended from time to time.

17. The documents at pages 389 to 392 of Mr Wood's affidavit served on LMIM are not "ASIC Benchmark Disclosure and Update for Investors" as is asserted in sub-paragraphs 43(c) to (f). In any event, as I understand Mr Wood's affidavit, the alleged concern is that "in the events that occurred, the average LVR of the portfolio increased" over time, after loans were made (see paragraph 43 of the affidavit). I refer to paragraph 45.60 of the Regulatory Guide.

18. I am aware from experience that property in Australia, and the Gold Coast suffered substantial diminution in value following the global financial crisis in late 2008. The Gold Coast market was particularly adversely affected and has suffered sustained value impairment, exacerbated by over-supply, extremely tight credit conditions, with associated depressed demand.

19. As explained in detail by Mr Corbett in his affidavit, he and I and other senior staff have been undertaking a substantial review of the portfolio of property assets that underlies the loans which are the Fund's principal assets. This has involved a review of the initial status of the transactions. Nothing has yet emerged, in respect of any of the transactions that have been examined to show that :-

  
Signed

  
Solicitor/Barrister/Justice of the Peace

- 
- (a) any distributions were made to any persons that were distributions other than income; or
  - (b) any loans were advanced in breach of the Constitution, as amended from time to time.

20. Mr Park and I have not closed our minds to these matters and will take legal and other appropriate advice should any facts emerge that give rise to any such concerns about such transactions. As presently informed, however, I know of no factual basis for the alleged concerns in this part of Mr Wood's affidavit.

21. I refer to paragraphs 46 to 49 of Mr Wood's affidavit. As to those matters:-

- (a) The only related party transactions that I understand to be the subject of this alleged concern are those involving payments from Scheme Property to LMIM or LM Administration (Mr Park and I being administrators, and probably, soon to be liquidators thereof);
- (b) The transactions with LMIM and LM Administration recorded in the extracts of the financial statements exhibited at pages 394 to 403 were payments of management fees;
- (c) In any event, as I shall explain, at the date of our appointment as administrators, LM Administration and LMIM owed nothing to the LM FMI Fund – rather, as at 31 March, 2013, the Fund owed \$37,878.73 to LMIM.

22. If I have misunderstood any of Trilogy's alleged concerns, perhaps I would have been assisted by the meetings which our solicitors offered to Piper Alderman in their letters of 3 May and 14 June (mentioned above). I remain open to discussions with members who have concerns they wish the administrators (or liquidators) to investigate.

---

PAGE 8



Signed



Solicitor/Barrister/Justice of the Peace



---

**The alleged conflicts - the Debtor Claim**

23. I refer to the last sentence of paragraph 3 of the outline of submissions on behalf of Mr Shotton, in which it is contended that "one of the debtors to be pursued [by the LM FMI Fund] is [LMIM] itself".

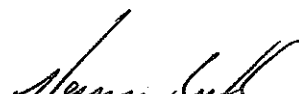
24. I do not know the basis of this submission. No such indebtedness was recorded in the audited accounts of the LM FMI Fund as at 30 June, 2012.

25. The only transactions of which I am aware between the LM FMI Fund and LMIM are the payment of management fees. These fees, however, were historically paid directly from LM FMI Fund to LM Administration (which was a service company providing services to many entities in the LM Group). Those management fees were, to the best of my knowledge, disclosed in the Constitution of the LM FMI Fund, and in the various Product Disclosure Documents. As far as I have been able to ascertain – though I have a completely open mind on this question – the payment of the management fees to LM Administration was done in accordance with the Related Party provisions of Part 5C.7 and Chapter 2E of the Act.

26. In any event, I have extracted a management balance sheet for the LM FMI Fund as at 31 March, 2013 from its accounts, together with the Fund's ledger (account no 14000) as at that date. These are at pages 12 to 17 of my exhibits. As appears therefrom, as at 31 March, 2013 (the next month-end balance date after our appointment), the state of the account between the LM FMI Fund and LMIM was that the LM FMI Fund owed \$37,878.73 to LMIM. That is, LMIM was a creditor, not a debtor of the LM FMI Fund, for a relatively trifling sum.



Signed



Solicitor/Barrister/Justice of the Peace

---

27. I am not aware of any other transactions or other bases on which there is or might be any conflict of interest and interest, of interest and duty, or of duty and duty, as between LM FMI Fund and LMIM. I have not, however, closed my mind to the possibility that such transactions may have occurred.

**The alleged conflicts - the POD Contention**

I understand that Piper Alderman and Trilogy have contended that LMIM should be removed as responsible entity because the administrators will be "on both sides of the fence".


**The alleged conflicts - the LM Administration Contention**

28. As in the case of LMIM, the only transactions between the LM FMI Fund and LM Administration of which I am aware are the payment of management fees (directed by LMIM to LM Administration). However, as appear from the ledger account 14000 (at page 14 and following of my exhibits), those management fees have been paid under a Ledger for LMIM (since it is the Responsible Entity).

29. The accounts do not reveal any payments or transactions between the LM FMI Fund and LM Administration other than for management fees directed by LMIM to LM Administration, and all booked in that account 14000. There is, in the accounts of LM FMI Fund, no ledger account for LM Administration (whether as creditor or debtor or otherwise).

30. I am not aware of any transactions or other bases on which there is or might be any conflict of interest and interest, of interest and duty, or of duty and duty, as between LM FMI Fund and LM Administration.

  
Signed

  
Solicitor/~~Barrister~~/Justice of the Peace

---

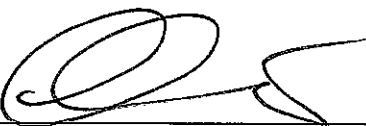
**The alleged conflicts – conclusion**

31. LMIM holds a policy of insurance that, depending on the nature of any claim made against it, may respond to claims of this kind. I have ensured it has been kept current and intend to continue to do so. It is commercially sensitive and confidential; and I therefore do not exhibit it and would object to any requirement to produce it.

32. The audited LMIM Financial Statements for the year ended 30 June, 2012 are at pages 18 to 61 of my exhibits. Its financial position has changed somewhat since then (principally a diminution of the cash assets), and the only substantial property of LMIM that may be available to respond to such claims, apart from the said insurance policy, is its interest in two properties:-

- (a) Its 66% interest in the mixed-use commercial building at 38 Cavill Avenue, Surfers Paradise; and
- (b) Its 57% interest in 20 Albatross Avenue, Mermaid Beach.

33. Mr Park and I are conscious of the need to remain astute to ensure that, as the administration continues, no conflicts arise, whether potential or actual. We intend to seek advice from solicitors appropriately qualified in various fields, which include (for example) Mr Peter Schmidt and John Moutsopoulos of Norton Rose Fullbright in relation to the operation of Chapter 5C of the Act, Mr Mark Waller of Clayton Utz in relation to insurance matters and Mr Stephen Russell and Mr Ashley Tiplady of Russells in relation to operational issues in the administration of LMIM, and, depending on the outcome of the administration, either the administration of any Deed of Company Arrangement (most unlikely) or the winding up of LMIM.



Signed



Solicitor/Barrister/Justice of the Peace

34. As I have explained in paragraphs 12 to 30 above, my and Mr Park's current understanding is that no such conflicts exist or are likely to arise. Notwithstanding that view, I also apprehend, particularly in relation to LMIM and LM Administration, that events are rather fluid, and the current state of affairs may change.

35. Should a conflict develop between LMIM and the LM FMI Fund, or between the LM FMI Fund and LM Administration, we will if appropriate approach the Court for directions as to the most effective (including cost-effective) resolution of any such conflicts.

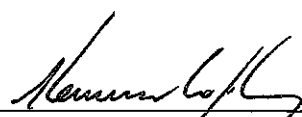
36. For example, should a conflict develop between LMIM and the LM FMI Fund, we are willing to seek to appoint special purpose liquidators to the assets of LMIM held in its own right, namely the insurance policy, and the two properties mentioned above. Equally, we are willing to seek the appointment of other practitioners as administrators or liquidators of LM Administration, should the necessary circumstances arise.

37. Such measures would, in our view, maintain the benefit of the large amount of work that we have done on the LM FMI Fund, and minimise any wastage of costs in that regard.

**NTA Calculations for the purpose of LMIM's Australian Financial Services Licence**

38. At the time of swearing this affidavit, the question of the value of the property held by LMIM at 38 Cavill Avenue, Surfers Paradise, raised by paragraphs 19 and 20 of the affidavit of Mr Wood and the affidavit of Mr Paul Russell have not been resolved.

  
Signed

  
Solicitor/Barrister/Justice of the Peace

39. I understand, however, that the Applicants are willing to agree, for the purposes of this proceeding, that LMIM's interest in 38 Cavill Avenue, Surfers Paradise is no greater than \$4,631,927, as stated in the audited 2012 Financial Statements of LMIM. The administrators agree.

40. LMIM holds a 66% interest in the property now described as lots 1-11 on SP123106 (38 Cavill Ave, Surfers Paradise). LMIM holds this interest as joint venture partner. I refer to the Joint Venture Agreement dated 7 April, 1999 at page 62 and following of my exhibits, to the associated retirement deeds each dated 9 October, 2006, and to the company extract in respect of the asset holding vehicle, and registered owner, Baronsand Pty Ltd, at page 129 and following of my exhibits.

41. LMIM also holds a 57% interest in 20 Albatross Avenue, Mermaid Beach.

42. Further:-

- (a) When I spoke at the first meeting of creditors, I had prepared some speaking notes. Those notes recorded values of assets and amount of liabilities "as recorded in" various records of LMIM;
- (b) I also said (as appears at page 8 of the Notes) that the administrators were investigating the value of the assets and the quantum of liabilities of the various Funds of which LMIM was Responsible Entity, and that we had not independently verified the figures I mentioned;
- (c) I did not express any view on the actual value of such assets;
- (d) The enquiries that I and my staff have undertaken since then lead me to the view – assisted by valuations recently obtained, as Mr Corbett has described in his affidavit - that the total current value of the assets of the LM FMI Fund is less than the carrying values of those assets, in its most recent financial statements (to 30 June, 2012).



Signed



Solicitor/Barrister/Justice of the Peace

---

## MR SHOTTON'S CONTENTIONS

### Expensive management fees to be paid

43. I was in court when Mr Tucker for the Respondent Mr Shotton made submissions on the issue of management fees on 2 May, 2013. I have since received a copy of the written submissions on behalf of Mr Shotton that Mr Tucker tendered on that day; and a draft of an affidavit that I understand Mr Shotton intends now to swear.

44. Neither in the written submissions nor in this draft affidavit is there any mention of any dissatisfaction or concern on the part of Mr Shotton as to the management fees that were charged by LMIM to the LM FMI Fund. I refer, however, to paragraph 4 of Mr Shotton's affidavit sworn 30 April, 2013, and filed on 16 May, 2013 (document 36), in which he refers to a concern about "costs".

45. I spoke by telephone with Mr Tucker and Mr Russell on Tuesday evening, 30 April, 2013. In the course of that conversation, Mr Tucker said that he had two concerns; firstly the interim distribution that was then proposed and secondly, management fees.

46. Mr Tucker said that we should charge only insolvency rates, hourly rates, not the management fees as well. I said words to the effect that I agreed. There followed further discussion as to the then proposed interim distribution of capital to members. I refer in that regard to paragraphs 50 to 57 below.

47. The administrators have not made, raised or paid to LMIM any charges on account of management fees (or the like) from the assets of the LM FMI Fund, as provided for in the Constitution – that is, a fee calculated as a percentage (whether



Signed



Solicitor/Barrister/Justice of the Peace

---

5% or otherwise) of funds under management. We have never said that we intend to do so. We have so far funded the operating costs of the LM FMI Fund (and other Funds of which LMIM is Responsible Entity) from available cash, and cash flow, including a contribution to a substantial weekly wages cost for staff of LMIM and LM Administration, of approximately \$132,805.04 gross, plus superannuation at 9% and payroll tax (4.75% in Qld) on our appointment, now reduced to approximately \$53,253.02 gross, plus superannuation at 9% and payroll tax, following numerous redundancies that we have effected.

48. Nor have we as administrators claimed, or been paid, any sum for our remuneration. Those claims will be paid in the ordinary course, and approved either by creditors or the court.

49. The administrators do not intend to make, raise or pay to LMIM any such charges on account of such management fees (or the like) from the assets of the LM FMI Fund in respect of any part of the administration of LMIM. If, as we currently think likely, LMIM goes into liquidation, that will remain the position. We intend, as I said to Mr Tucker on 30 April, that our remuneration will be charged on the usual hourly rates of insolvency practitioners, and that these claims will be subject to the provisions of the *Corporations Act*.

#### **Interim Distribution; the Deutsche Bank Facility**

50. In the conversation on 30 April, 2013, Mr Tucker also said words to the effect that his second complaint was that he thought the money about to be distributed to unitholders should be used to retire the Deutsche Bank debt, rather than pay it back to the investors. (I have not read any such complaint in either of Mr Shotton's affidavits.) Mr Russell said to Mr Tucker that there was a balancing



Signed



Solicitor/Barrister/Justice of the Peace

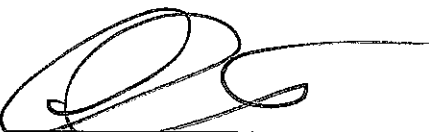
exercise; that many investors no doubt needed the money; and that it would be a "hard hearted trustee" who would not make the scheduled payment.

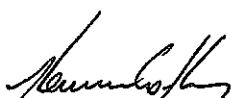
51. I then said to Mr Tucker words to the effect that the facility with Deutsche Bank was on terms that the interest was payable despite any interim reductions in principal until 30 June, 2014. I said words to the effect that paying the interim distribution in May to Deutsche Bank would not save any interest under the Facility. Mr Tucker said words to the effect, "Really? We've seen the docs?" I said, "Yes." (He did not ask for a copy.)

52. I refer to the documents in relation to the Deutsche Bank facility with LMIM as RE of the LM FMI Fund at pages 139 to 256 of my exhibits. The relevant provisions are in the following provisions of the Override Deed dated 21 December, 2012:-

- (a) the definitions of Initial Amortisation Payment, Extended Term, Full Margin, Scheduled Amortisation Payments, Voluntary Prepayment, Voluntary Prepayment Amount, in clause 1.1; and
- (b) clause 2.1(e) – making of the Initial Amortisation Payment;
- (c) clause 4.2(c) – obligation to make six monthly Scheduled Amortisation Payments of \$500,000;
- (d) 4.2(i) – the Full Margin is payable on the Facility principal, including amounts voluntarily prepaid, despite interim reductions of the principal, in the period to 30 June, 2014.

53. In the result, my understanding of the terms of the Deutsche Facility was, when I spoke to Mr Tucker, and remains, that, despite LMIM's obligations to reduce the principal to \$28 million after execution of the Override Deed in December, 2012, and then by monthly payments of \$500,000, and despite its entitlement to make

  
Signed

  
Solicitor/Barrister/Justice of the Peace



---

partial voluntary repayments of the principal under the Facility, interest is payable on the amounts voluntarily prepaid before 30 June, 2014, unless the entire Facility is prepaid before 30 June, 2014.

54. Further, prior to our appointment as administrators, LMIM had communicated to members its intention to make programmed interim distributions to them, including the payment scheduled for March, 2013 (in fact ultimately paid on and after 21 June, 2013). I refer, for example, to the contents of the letter from LMIM of 20 December, 2012 under the heading "Periodic Capital Distributions for Investors", at page 73 of the exhibits to the draft affidavit of Mr Shotton.

55. Indeed, the Deutsche Bank facility, as revised in December, 2012, has provided liquidity to fund operations and these planned, albeit small interim distributions to members. I know of no basis for any complaint that LMIM could have saved interest on the Deutsche Bank facility by paying the sum of \$4.3 million to it, rather than to members of the LM FMI Fund.

56. I should add that, even if the terms of the Deutsche Bank facility gave LMIM the opportunity to save interest cost, rather than distribute funds to members, I would have considered the fact that many investors had probably budgeted to receive the funds as relevant to whether to prepay the Deutsche Bank facility, or pay the interim distribution to members.

57. Apart from Mr Tucker's submissions on 2 May and (possibly) for paragraph 4 of Mr Shotton's affidavit of 30 April, no member has complained about the interim distribution of \$4.3 million, which the administrators have paid.

  
Signed

  
Solicitor/Barrister/Justice of the Peace

---

**"The Fund is Insolvent" but the Administrators have not acted to wind up the Fund, and ASIC's draft Enforceable Undertaking**

58. I refer to the submissions made by Mr Tucker on behalf of Mr Shotton on 2 May, 2013, to the effect that it was obvious that the LM FMI Fund should be wound up. I refer also to the contentions of Ms Hayden of ASIC, in the course our meeting with her on 23 April, 2013, that ASIC was anxious that the administrators decide whether to wind up the LM FMI Fund as soon as possible.

59. Neither I nor Mr Park, nor anyone on our behalf has said that we wished to delay or would delay any such decision. We intended to do so as soon as we could. Mr Park and I took the view that we ought not make any such decision before we could properly investigate the affairs of the LM FMI Fund, and form a considered view on what is in the best interests of the members – a winding-up or the appointment of another responsible entity. It was for this – and other – reasons that we sought and obtained from de Jersey CJ, on 12 April, 2013, an order extending the time for convening the second meeting of creditors of LMIM.

60. I refer to the written submissions of Mr Sullivan SC, at pages 257 to 264, and to the transcript of the argument before and (brief) reasons of his Honour, at pages 265 to 271 of my exhibits. I refer also to the affidavit of Mr Corbett, sworn today, and the affidavit of Mr Russell sworn 7 May, 2013 and filed in court by leave on that day.

61. I confirm that on the evening of 6 May, 2013, Mr Park and I met and resolved, on behalf of LMIM to wind up the LM FMI Fund. The work that Mr Corbett and I, and other FTI staff have done since then has fortified me in my view that the LM FMI Fund should be wound up. In accordance with the over arching cash flow for the whole of the Fund that Mr Corbett and I have developed, Mr Park and I, as



Signed



Solicitor/Barrister/Justice of the Peace

administrators or liquidators of LMIM wind up the LM FMI Fund now intend to proceed broadly as follows (subject of course to the outcome of the present application):-

- (a) I estimate the winding up will be complete within three years;
- (b) No further external funding is anticipated;
- (c) LMIM will repay the Deutsche Bank facility by June, 2014; and
- (d) There will be 10 to 12 interim distributions of capital to members.

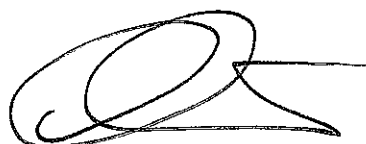
62. Following the meeting with officers of ASIC on 23 April, 2013, we received correspondence and a Notice pursuant to section 912C of the Act on 30 April, 2013. I refer, in that regard, to the correspondence and other documents passing between ASIC and me, and ASIC and Russells, between 30 April, 2013 and 24 May, 2013, at pages 272 to 315 of my exhibits. The matters of fact set out in the letters from Russells to ASIC in that bundle are true.

63. I have not received any objection or criticism from ASIC to the matters stated or proposed in the letters from Russells to it dated 1 May, 2013 and 24 May, 2013, or the revised draft of the Enforceable Undertaking. Indeed, aside from Mr Copley's email dated 22 May, chasing a reply to the section 912C notice in relation to funds other than the LM FMI Fund (dealt with in detail in Russells' unanswered letter dated 1 May, 2013), ASIC has not responded at all to:-

- (a) The letter from Russells of 1 May, 2013;
- (b) The revised draft of the Enforceable Undertaking, sent on 21 May, 2013;
- (c) The Executive Summary sent on 21 May, 2013;
- (d) The letter from Russells of 24 May, 2013.

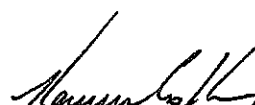
64. The other matters in Mr Shotton's written submissions (relating to alleged conflicts) are dealt with above.

---



Signed

PAGE 19



Solicitor/Barrister/Justice of the Peace

---

## ASIC'S CORRESPONDENCE AND APPLICATION

### The Meeting of Members held on 30 May, 2013

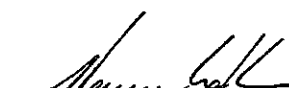
65. As I mentioned in my earlier affidavit, on 25 April, 2013, Mr Park and I resolved on behalf of LMIM to convene a meeting of members of the LM FMI Fund to permit them to consider and, if thought fit, replace LMIM as Responsible Entity with Trilogy Fund Management Limited.

66. I refer to the correspondence exhibited to the affidavit of the ASIC litigation solicitor, Mr Hugh Copley, in and in particular to his correspondence dated 28 May, 2013 (at page 81 and following) and 6 June, 2013 (at page 101 and following). For the reasons that follow in paragraphs 62 to 80 below, I emphatically deny Mr Copley's assertions (in his correspondence, though not in his affidavit) that Mr Park and I acted somehow improperly, for the purpose of "[achieving] a forensic advantage" in these proceedings, and that we were, in calling the meeting, motivated by "a desire to generate significant professional fees".

67. Before convening that meeting, I attended a meeting with three officers of ASIC – on 23 April, 2013. I also sought and obtained legal advice about the attempt by Trilogy to become temporary responsible entity. Although I had not had any experience of meetings of the members of the LM FMI Fund, I knew from prior experience (such as with the Fincorp Group and consultancy work with Asset Resolution Limited) that in Schemes with large numbers of retail investors, they often expect to be consulted about important matters. I (and various members of my staff) had also had numerous discussions, both personally and by telephone, with many small investors and many financial advisors of such investors. I believed, from this prior experience, and these conversations, that many of the members are not sophisticated business people, many are retirees, and most would be unlikely to wish



Signed



Solicitor/Barrister/Justice of the Peace


to become directly involved in these proceedings, especially given the losses suffered in this Fund, and the legal costs that would be involved.

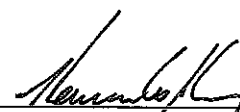
68. For these reasons, I formed the view that it was right and proper to convene a meeting of members to give them an opportunity to vote, at practically no cost, on which of the two companies they wanted to be the Responsible Entity of their Fund. I refer to the Affidavit of Mr Dyer as to the results of the meeting. I refer also to email between Ms Banton of Piper Alderman and officers of Trilogy, and a litigation funder, on 10 and 11 April, 2013 – just prior to the application by Piper Alderman to the Federal Court of Australia and the proceedings before de Jersey CJ in relation to the LM Managed Performance Fund on 12 April, 2013. These emails are at pages 316 to 317 of my exhibits.

69. I knew that Trilogy was itself a member of the LM FMI Fund (as RE of the LM Wholesale Fund), and was entitled to attend, speak at, and vote at a meeting of members. I also knew that Trilogy had become the RE of the LM Wholesale Fund by winning a vote at a meeting of its members on 1 November, 2012. I believed that it was well able to promote its case for election to members and that, because of its success in November, 2012, and its continued interest in becoming RE of the LM FMI Fund (and indeed of other Funds of which LMIM is RE), there was an appreciable chance that its campaign might succeed.

70. I was also aware that the necessary majority for passage of a resolution to change the Responsible Entity was 50% of the members entitled to vote.

71. Norton Rose Fullbright advised me in relation to the meeting. The matters of fact advanced in their letters to ASIC, in the bundle of correspondence exhibited to Mr Copley's affidavit, are true.

  
Signed

  
Solicitor/Barrister/Justice of the Peace

---

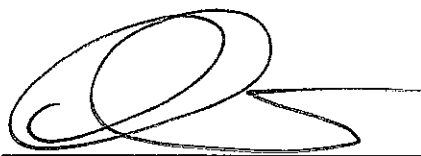
72. Moreover, before Mr Park and I decided to call the meeting, we consulted ASIC. In particular, there was a meeting at the Brisbane office of ASIC on 23 April, 2013, attended by me and Ms Dunn from FTI, Mr Russell and Ms Copley from Russells, and Ms Hayden, Ms Gubbins and Mr Ham of ASIC. I refer to Mr Russell's affidavit in that regard. His affidavit accords with my recollection of the meeting.

73. In particular, after Mr Russell said that we intended to call a meeting of members to gauge the views of members to having Trilogy become the RE, and that we intended that the Notice of Meeting would be in the streets by the end of the week, Ms Gubbins or Ms Hayden (I do not recall which) did not object to that course. No officer of ASIC said anything to the effect that such a meeting could not be called, or should not be called, or that there was anything improper in calling such a meeting.

74. I also spoke by telephone to Ms Gubbins on Friday morning, 26 April, 2013, to tell her, following our work on the meeting documents over the last few days, that we were ready to publish the Notice of Meeting. She thanked me for letting her know. Again, she did not say anything to the effect that such a meeting could not be called, or should not be called, or that there was anything improper in calling such a meeting.

75. With all due respect to Mr Copley, I cannot understand his complaints. Far from the meeting being called to enable the First Respondent to "achieve a forensic advantage" in these proceedings, I believed that there was an appreciable chance that Trilogy would carry the day. Having taken legal advice, I also decided to give Trilogy an opportunity itself to write to members, and in effect to campaign for their support.

---



Signed

PAGE 22



Solicitor/Barrister/Justice of the Peace

---

76. Indeed, I believed that:-

- (a) there may have been a doubt about the validity of the "see through" provisions in the Constitution of the LM Wholesale Fund so that Trilogy may have contended that they did not apply; and hence that it was entitled to vote the 20.2% as RE of the LM Wholesale Fund;
- (b) Trilogy may have been able to amend the constitution of the Wholesale Fund to remove any such doubts (in its favour);
- (c) Trilogy may have contended that the LM Currency Fund and the LM Institutional Funds could not vote (perhaps on the basis that LMIM is the RE of both of those feeder funds and was interested in the outcome of the vote to replace Trilogy as RE);
- (d) Trilogy may have contended that this would reduce the number of units able to vote from 358.0m to 263.9m of which 72.3m (those held by the LM Wholesale Fund) would vote for the resolutions;
- (e) Thus, to pass the extraordinary resolutions, Trilogy may have contended that it required only a further 59.7m of 191.6m (263.9m less 72.3m) units to pass the resolution.

77. Another possibility, I believed, was that Custom House (a mortgagee of the assets of the LM Currency Fund, including its units in the LM FMI Fund) might have attempted to exercise its rights under the charge and vote in favour of Trilogy.

78. In short, before convening the meeting, I believed that there was an appreciable chance that Trilogy may have responded to the Notice of Meeting (including by litigation either before or after the meeting) to secure voting rights in respect of approximately 45% of the required vote and, in that event, it may easily secure the requisite 50% majority. Consequently, I believed that there was a chance



Signed



Solicitor/Barrister/Justice of the Peace

that the outcome of the meeting would be that Trilogy would be elected as the Responsible Entity.

79. Finally as to the matter of professional fees mentioned by Mr Copley (in his letter of 6 June, 2013, at p 102 of his exhibits), I accept of course that Mr Park and I, and FTI have a financial interest in LMIM remaining as Responsible Entity of the LM FMI Fund. I believe that one's interest in earning professional fees is secondary to one's duties as an insolvency practitioner, whether as liquidator, receiver, administrator or in some other fiduciary capacity. FTI has a very busy practice. If LMIM ceases to be Responsible Entity of the LM FMI Fund, the loss of professional revenue will not cause any substantial harm to FTI, me or Mr Park. Whilst Mr Park and I would, on balance, naturally prefer to retain our appointments, the matter of professional fees formed no part of his or my reasons in convening the meeting of members.

80. As appears from the correspondence from Norton Rose Fullbright, I wished to speak to Mr Copley's instructor about his correspondence. I wished to understand why it was at odds with my previous dealings with ASIC in relation to the meeting of members. He did not arrange such a meeting. I do not know who was Mr Copley's instructor for his correspondence.

#### **The applications for the appointment of receivers**

81. The only ground relied on by ASIC for the appointment of receivers to assets of the LM FMI Fund are that LMIM did not lodge half yearly accounts of the LM FMI Fund when due.



Signed



Solicitor/Barrister/Justice of the Peace



82. So far as I am aware, it is true that LMIM did not lodge such accounts – which I understand were due to be lodged by 15 March, 2013. We were not in office as administrators on that date.


83. However, I refer to the letter from LMIM's solicitors, King & Wood Mallesons to ASIC, dated 26 March, 2013, at page 318 of my exhibits. Following delivery of that letter to ASIC:-

- (a) On 9 April, 2012, ASIC acceded to the application to issue a suspension of LMIM's Australian Financial Services Licence on terms that permit it to continue as responsible entity for two years for the limited purposes set out therein;
- (b) Despite the invitation in the last paragraph of that letter, no officer of ASIC expressed any concern to me, or any other staff of FTI, or to LMIM's solicitors as to any "other arrangements [it] may wish to propose to formalise any financial reporting or other relief in favour of the administrators during the administration period".

84. Indeed, that remains the position today – no officer of ASIC raised the non-lodgment of the half yearly account as a reason for ASIC's application to appoint receivers. It gave no prior notice of its intention to seek the relief in the Interlocutory Application filed on 3 May, 2013, either on the ground stated, or otherwise.

85. I have made arrangements for the annual financial report for the LM FMI Fund to be prepared, audited and provided to members within three months after the end of the 2013 financial year.

---



Signed

PAGE 25

---



Solicitor/Barrister/Justice of the Peace

---

**Application for the appointment of persons other than me and Mr Park to take responsibility for the winding-up of the LM FMI Fund**

86. Both ASIC and Mr Shotton apply for orders for the appointment of persons other than me and Mr Park to take responsibility for the winding-up of the LM FMI Fund. Save for the submissions on behalf of Mr Shotton (assertions in relation to conflict, management fees, and the interim capital distribution) and the matters advanced on behalf of the Applicants (assertions in relation to conflict and as to the adequacy of LMIM's AFSL) I am not aware of any other grounds to support the claims for such orders.


**Breach Reporting under Chapter 5C**

87. As appears from the said letter from King & Wood Mallesons, dated 26 March, 2013, Mr Park and I are conscious of LMIM's statutory reporting obligations under the Act. ASIC has not contended otherwise.

**WASTE AND DUPLICATION OF WORK UNDERTAKEN AND COSTS INCURRED SINCE APPOINTMENT**

88. I refer to the affidavit of Mr John Corbett, which I have read. Soon after our appointment, I retained Mr Corbett to assist me and other FTI staff in the management of the underlying assets of the LM FMI Fund. The matters of fact set out in his affidavit, as to the work that he and other FTI staff and staff of LMIM and LM Administration have done, under my supervision, are accurate.

89. I have prepared a schedule summarising the work done by FTI staff to date. This schedule is extracted from day to day timesheet records, and is yet to be checked, for the purposes of a claim for payment, so that adjustments may well be necessary.

  
Signed


  
Solicitor/Barrister/Justice of the Peace

Subject to that, however, the schedule provides a guide to the work done, and the cost thereof. It appears at page 330 and following of my exhibits. In summary:-

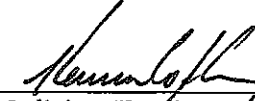
- (a) I have maintained separate cost ledgers for work done in respect of the various funds, including the LM FMI Fund the subject of the present application;
- (b) 30 FTI staff members have worked on matters specific to LM FMI Fund (including the feeder funds) and another 36 staff members may have worked on matters that either directly or indirectly relate to LM FMI Fund or through the work they performed in relation to LMIM;
- (c) FTI staff have worked a total of approximately 2,005.35 hours since our appointment as administrators specifically on LM FMI Fund matters;
- (d) At FTI's usual hourly rates (and subject of course to resolution of the creditors or adjudication by the Court), the administrators would claim:-
  - (i) A total fee of \$960,756.90 for remuneration for work to date in respect of the LM FMI Fund; and
  - (ii) A proportion of the fee of \$1,174,399.15 for work to date in respect of LMIM (which proportion is yet to be decided, following a detailed review of the work billed to those work codes, but likely to be less than half).

90. I understand that if Trilogy replaces LMIM as responsible entity, substantially the whole of this work will be wasted. I say that because I understand that:-

- (a) Trilogy intends to undertake its own review of the asset portfolio, which accounts for the lion's share of the work that I and my staff have done (and I refer to paragraph 12 of the Affidavit of Paul Wood of Trilogy, filed on 7 May, 2013 (documents 29-31), and pages 121 and 122 of ex PW-1 to his affidavit);



Signed



Solicitor/Barrister/Justice of the Peace

- 
- (b) I refer also to a document that was recently produced by Trilogy (under a subpoena issued many weeks ago by LMIM on my instructions), entitled "LM First Mortgage Income Fund Draft Strategy Paper for the LM Loan Portfolio", at pages 333 to 353 of my exhibits;
- (c) That draft strategy paper sets out proposed work to be undertaken by Trilogy, if it becomes RE of the LM FMI Fund and contains a description of work undertaken by me, Mr Corbett and our team. It also notes that:-
- (i) Trilogy will "undertake a full review of the loan portfolio before the strategy can be formalised" (which is what I would expect); and
  - (ii) A full sales and marketing analysis will be undertaken on each project;
  - (iii) Trilogy will engage numerous external consultants, including receivers.

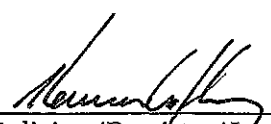
91. While I cannot say how much of the costs that have been incurred by FTI would be duplicated if Trilogy is appointed, for the same reasons, I believe that a very substantial part of those costs will be duplicated.

92. Further, as the strategy referred to by Mr Wood states, Trilogy's strategy involves:-

- (a) Charging management fees of 1.5% of gross asset value (per annum I understand); plus
- (b) The costs of the receivers of underlying assets whom Trilogy proposes to appoint.

93. Should LMIM remain as responsible entity of the LM FMI Fund, and Mr Park and I remain as Administrators (and/or Deed Administrators), we see no need

  
Signed


  
Solicitor/Barrister/Justice of the Peace

to appoint receivers of underlying assets, or incur the costs of any other insolvency practitioners.

I have made arrangements for the accounts of the LM FMI Fund to be audited and lodged within the time required.

94. 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 GINETTE DAWN MULLER on 27 <sup>June</sup>~~April~~, 2013 at Brisbane in the presence of:

  
Deponent

  
Solicitor/Barrister/Justice of the Peace

**SUPREME COURT OF QUEENSLAND**

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

**Applicants: RAYMOND EDWARD BRUCE AND  
VICKI PATRICIA BRUCE**

**AND**

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

**AND**

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

**Third Respondent: ROGER SHOTTON**

**Intervener: AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

**INDEX TO EXHIBIT GDM-15**

<b>Doc No.</b>	<b>Description</b>	<b>Date</b>	<b>Page</b>
1	Applicants' Draft Amended Originating Application		1-4
2	Letter Russells to Piper Alderman	03.05.2013	5-6
3	Letter Russells to Piper Alderman	14.06.2013	7
4	Email, Trevor Gibson, Trilogy to advisors	17.05.2013	8-10
5	Extract from ASIC website regarding Regulatory Guides	-	11
6	Management balance sheet for the LM FMI Fund as at	31.03.2013	12-13
7	LM FMI Fund's ledger for account no 14000 - LMIM	31.03.2013	14-17
8	LMIM Financial Statements for the year ended 30 June, 2012	04.10.2012	18-61
9	Joint Venture Agreement re 38 Cavill Avenue	07.04.1999	62-93
10	Deed of Retirement	09.10.2006	94-110
11	Deed of Retirement	09.10.2006	111-128
12	ASIC Historical Company Extract Baronsand Pty Ltd	04.04.2003	129-138


**INDEX TO EXHIBITS**

Filed on behalf of the First Respondent

**Russells**  
Level 21  
300 Queen Street  
**BRISBANE 4000**  
Phone: 07 3004 8888  
Fax: 07 3004 8899

Doc No.	Description	Date	Page
13	Facility Agreement LMIM and Deutsche Bank AG	01.07.2010	139-238
14	Override Deed LMIM and Deutsche Bank AG	21.12.2012	239-256
15	Written submissions of Mr Sullivan SC	12.04.2013	257-264
16	Transcript of the argument before and (brief) reasons of de Jersey CJ, extending convening period	12.04.2013	265-271
17	Notice from ASIC under s 912C of the <i>Corporations Act</i>	30.04.2013	272-280
18	Letter Russell to ASIC	01.05.2013	281-294
19	Letter from Russells to ASIC	21.05.2013	295
20	Executive Summary of Management and Strategy Report by administrators	21.05.2013	296-298
21	Draft revised Enforceable Undertaking (changes marked)	21.05.2013	299-303
22	Draft revised Enforceable Undertaking	21.05.2013	304-308
23	Letter ASIC to Russells	22.05.2013	309-310
24	Email chain ASIC and Russells	22.05.2013	311-313
26	Letter Russells to ASIC	24.05.2013	314-315
27	Emails Ms Banton to Trilogy and International Litigation Partners	10.04.2013 11.04.2013	316-317
28	Letter King & Wood Mallesons to ASIC	26.03.2013	318-320
29	Notice of Suspension of LMIM's AFSL	09.04.2013	321-329
30	Work in progress summary schedule	-	330-332
31	Trilogy's Draft Strategy Paper for LM FMI Fund	00.07.2012	333-353

Signed:

  
Russells

Description:

Solicitors for the First Respondent

Dated:

27 June, 2013

**SUPREME COURT OF QUEENSLAND**

REGISTRY: Brisbane  
NUMBER: 2013

Applicants: **RAYMOND EDWARD BRUCE AND  
VICKI PATRICIA BRUCE  
AND**

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

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

**AMENDED ORIGINATING APPLICATION**

To the respondents, LM Investment Management Limited (Administrators Appointed) (LM) and the members of the LM First Mortgage Income Fund (the **Income Fund**),

**TAKE NOTICE** that the Applicants are applying to the Court for the following orders:

**Leave to Proceed**

1. An order pursuant to section 440D of the *Corporations Act (Cth) 2001* (the **Corporations Act**) that the Applicants be granted leave to bring these proceedings against the First Respondent, in its capacity as responsible entity of the Income Fund.

**Replacement of LM as responsible entity of the Income Fund**

2. An order pursuant to sections 601FN and 601FP of the Corporations Act, that Trilogy Funds Management Limited (or such other company as the court determines appropriate) is appointed temporary responsible entity of the Income Fund.
3. Further or in the alternative to order 2 hereof, an order pursuant to regulation 5C.2.02 of the *Corporations Regulations 2001 (Cth)* that Trilogy Funds Management Limited

---

**Originating Application**

Filed on behalf of the Applicants  
Form 5 R.26

Piper Alderman  
Level 23, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000  
Tel: +61 2 9253 9999  
Fax: +61 2 9253 9900  
Ref: AKB.SP.380287-0001



(or such other company as the court determines appropriate) is appointed temporary responsible entity of the Income Fund.

4. In the alternative to orders 2 and 3 hereof, an order pursuant to section 80 of the *Trusts Act (Qld) 1973*, that Trilogy Funds Management Limited (or such other company as the court determines appropriate) be appointed responsible entity/trustee of the Income Fund until further order of the court or an extraordinary resolution of the Income Fund's members providing for an alternative appointment.
- 4A. In the alternative to orders 1-4 hereof, an order pursuant to section 12 of the *Civil Proceeding Act (2011)(Old)* and Rule 272 of the *Uniform Civil Procedure Rules*, that David Whyte and Andrew Peter Fielding be appointed as joint and several receivers and managers (**Receivers**) to all of the assets of the Income Fund, until further order of the Court.
- 4B. An order that the Receivers appointed to the assets of the Income Fund have all the powers prescribed by section 420 of the *Corporations Act 2011 (Cth)* as if the Income Fund were a corporation.
- 4C. An order pursuant to section 247A of the *Corporations Act 2011 (Cth)* that the Applicants and Trilogy Funds Management Limited, as responsible entity for LM Wholesale First Mortgage Income Fund, be authorised to inspect and take copies of the books of the Income Fund.

#### **Notification Procedures**

5. An order that the Applicants shall serve the originating application and any supporting affidavit (s) filed in respect of the originating application on the Australian Securities and Investments Commission (ASIC).
6. An order that the Applicants shall serve the Second Respondents, the members of the Income Fund (the **Members**) with the originating application and any supporting affidavit (s) filed in respect of the originating application (the **Originating Documents**) by:-
  - 6.1 sending the Originating Documents by ordinary post to the Members at their last known address as contained on the Income Fund's register of members; and/or
  - 6.2 sending the Originating Documents by email to the Members where the Members have an email address known to the Applicants.
7. An order that the Originating Documents be made available in pdf. format on the websites of the:-
  - 7.1 First Respondent, being [www.lmaustralia.com](http://www.lmaustralia.com); and
  - 7.2 Applicants' solicitors, being [www.piperalderman.com.au](http://www.piperalderman.com.au),within 3 working days of the date of order.

8. An order that service of any further Court documents on the Members, including any orders made in respect of the originating application be effected by those Court documents being made available in pdf. format on the websites of the:-

8.1 First Respondent, being [www.lmaustralia.com](http://www.lmaustralia.com); and

8.2 Applicants' solicitors, being [www.piperalderman.com.au](http://www.piperalderman.com.au),

within 3 working days of the date of order.

This application will be heard by the Court at Brisbane

on: April 2013 at 10 am

Filed in the Brisbane Registry on 15 April 2013

Registrar:

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you may before the day for hearing file a Notice of Address for Service in this Registry. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

On the hearing of the application the Applicants intend to rely on the following affidavit:

1. Affidavit of Raymond Edward Bruce, sworn 14 April 2013.

If you intend on the hearing to rely on any affidavits they must be filed and served at the Applicants' address for service prior to the hearing date.

If you object that these proceedings have not been commenced in the correct district of the Court, you must apply to the Court for dismissal of the proceedings.

The First Respondent is sued in its capacity as responsible entity of the Income Fund.

THE APPLICANTS' ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS.

**PARTICULARS OF THE APPLICANTS:**

Applicants' Names:

Raymond Edward Bruce and Vicki  
Patricia Bruce

28092784v1

Applicants' residential or business address: 167 Foreshore Road, RD1, KAITAIA  
0481 NEW ZEALAND

Applicants' solicitor's name	Amanda Kim Banton
and firm name:	Piper Alderman
Solicitor's business address:	Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Address for service:	Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999
Fax:	+61 2 9253 9900
E-mail address:	<a href="mailto:abanton@piperalderman.com.au">abanton@piperalderman.com.au</a>

Signed:

Description: Solicitor for the Applicants

Dated: 15 April 2013

This application is to be served on:

LM Investment Management Limited  
(Administrators Appointed)  
of: Level 4, RSL Centre, 9 Beach Road, Surfers Paradise QLD 4217

and

John Richard Park and Ginette Dawn Muller in their capacity as administrators of LM  
Investment Management Limited  
FTI Consulting  
Corporate Centre One  
Level 9, 2 Corporate Court  
Bundall Qld 4217

and

The members of the LM First Mortgage Income Fund, by post and/or email

and

Australian Securities and Investments Commission

Attention: Tim Walker  
GPO Box 9827  
Sydney NSW 2001

28092784v1

# RUSSELLS

3 May, 2013

Our Ref: Mr Russell/Ms Copley  
Your Ref: Ms Banton

EMAIL TRANSMISSION
--------------------

Piper Alderman  
Solicitors  
SYDNEY NSW 2001

email: [abanton@piperalderman.com.au](mailto:abanton@piperalderman.com.au)

---

Dear Colleagues

**LM Investment Management Limited (Administrators Appointed) & Ors ats  
Bruce & Anor**

We acknowledge receipt this morning of your email enclosing a copy of a draft of an Amended Originating Application that you say "[your] clients intend to have heard on 13 May, 2013".

The way in which your firm is conducting these proceedings, is deeply unsatisfactory.

You have deliberately held affidavits back and, despite the enormous cost and time devoted to the management of the proceedings yesterday, your clients' counsel said not a word about this proposed Amended Originating Application.

As you may be aware, UCPR 377 provides that your clients need leave of the court to amend the originating process.

Please advise us why the prospect of this amendment was not raised with His Honour yesterday.

We will, of course, take instructions on the proposed amended Originating Application and consider the implications of it with senior counsel. Subject to those matters, it may be the relief sought in proposed paragraphs 4A and 4B can be accommodated on 13 May, in the sense that if those applications were argued, it may not lengthen the proceedings. No decision, of course, can be made on that until we see the material that your clients have so far held back.

As to the relief to be claimed in proposed paragraph 4C, however, we would think that, if the amendment were allowed, there is no prospect that such an application could be dealt with on 13 May.

---

*Liability limited by a scheme approved under professional standards legislation*

Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 21, 300 Queen Street, Brisbane QLD 4000  
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

*RussellsLaw.com.au*

dmf\_20130471\_130.docx

---

In any event, we think the application for an amendment to add proposed paragraph 4C, is unnecessary.

Your firm seems to have operated on the basis that the Administrators would not co-operate in relation to your investigations of your clients' claims. Despite the combative attitude that your client, Trilogy, has adopted, the Administrators are perfectly willing to deal with it and other members in relation to your firm's investigations. Our clients are dedicated to acting in the best interests of members and will be very happy to co-operate with and assist your firm in your enquiries and investigations.

Mr Park and Ms Muller have explicitly instructed us to make it clear to you that you are welcome at FTI at any time, and that our clients will be happy to work with you and your team in looking at these matters.

In that spirit of co-operation, we expect that it will be unnecessary for your clients to resort to such formal and expensive processes as the rather unwieldy procedures involved in court proceedings for orders for inspection of Scheme documents. Have you, for example, considered the rather restrictive provisions of section 247C of the Act?

Nonetheless, in case your clients wish to proceed with a formal application for inspection of documents, would you please identify the members of the funds for whom you act and who wish to see the documents? Would you also please let us have a short statement of the purposes for which your clients wish to inspect documents?

Finally, would you please let us have a list of the documents or classes of documents which your clients wish to inspect?

We are instructed that, upon receipt of this information, we will take instructions from the Administrators and come back to you. Our general instructions are that our clients will co-operate in the production for inspection of any books and records that are relevant to matters in issue, that any members of the fund for whom you act wish to inspect, for a proper purpose.

Finally, the two broad avenues that we have mentioned above are not mutually exclusive – you are welcome to consult the Administrators at any time, whether or not you choose to seek formal production of documents under section 247A.

Yours faithfully



**Stephen Russell**  
*Managing Partner*

Direct (07) 3004 8810  
Mobile 0418 392 015  
[SRussell@RussellsLaw.com.au](mailto:SRussell@RussellsLaw.com.au)

# RUSSELLS

14 June, 2013

Our Ref: Mr Russell/Ms Copley  
Your Ref: Ms Banton

EMAIL TRANSMISSION
--------------------

Ms Amanda Banton  
Piper Alderman  
SYDNEY

email: [ABanton@piperalderman.com.au](mailto:ABanton@piperalderman.com.au)

Dear Ms Banton

**Bruce and Anor v LM Investment Management Limited  
(Administrators Appointed) ACN 077 208 461, in its capacity as  
responsible entity of the LM First Mortgage Income Fund and Anor  
Supreme Court of Queensland Proceeding 3383 of 2013**

We refer to our letter to you dated 3 May, 2013, in which we invited you to make arrangements to inspect the books of LM Investment Management Limited (Administrators Appointed) (LMIM), in response to the then proposed amendments to your clients' originating application.

To date, we have not received any response and no arrangements have been made to inspect the books of LMIM.

Our clients remain willing to work co-operatively with you to facilitate any inspection that is sought.

If your clients still wish to inspect the documents, please:

- (a) identify the members of the funds for whom you act and who wish to see the documents;
- (b) provide us with a short statement of the purposes for which your clients wish to inspect the documents; and
- (c) provide us with a list of the documents or classes of documents which your clients wish to inspect.

We will then seek our client's instructions and revert to you as soon as possible.  
Yours faithfully



**Stephen Russell**  
Managing Partner

Direct (07) 3004 8810  
Mobile 0418 392 015  
[SRussell@RussellsLaw.com.au](mailto:SRussell@RussellsLaw.com.au)

*Liability limited by a scheme approved under professional standards legislation*

Brisbane / Sydney  
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 21, 300 Queen Street, Brisbane QLD 4000  
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899  
[RussellsLaw.com.au](http://RussellsLaw.com.au)  
imc\_20130471\_228.docm

## Trevor Gibson

---

From: Trevor Gibson  
Sent: Friday, 17 May 2013 11:30 AM  
To: Matthew Dellit  
Subject: LM Adviser Update

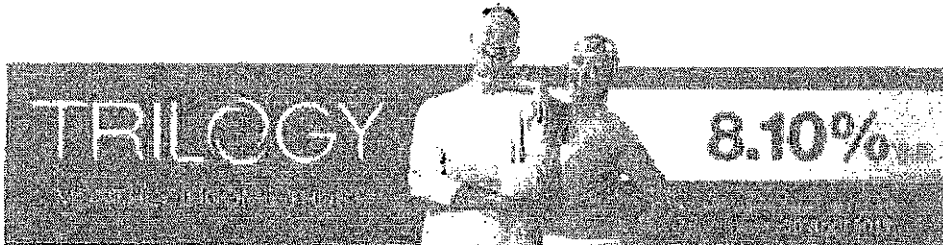
Hi Matt

The information below may be of assistance to your Advisers.

Regards

Trevor Gibson  
Head of Distribution - QLD & WA  
Trilogy Funds Management Limited

t 07 3039 2802 in 0410 554 283 f 07 3039 2829  
Level 10, 241 Adelaide Street Brisbane QLD 4000 | GPO Box 1648 Brisbane QLD 4001  
e t.gibson@trilogyfunds.com.au w [www.trilogyfunds.com.au/monthlyincometrust](http://www.trilogyfunds.com.au/monthlyincometrust)



**\*IMPORTANT:** This banner (current as of May 2013) is issued by Trilogy Funds Management Limited (AFSL 261425) and provides general information only. It does not provide financial product advice nor is it an offer of securities. Past performance is not a reliable indicator of future performance. Average annualised monthly rate is based on the current net daily yield on allocated units assuming re-investment of distributions and no exit fees.

This email message (including file attachments) may contain confidential or privileged information and is intended for the sole use of the addressee/s of this email only. If you are not an intended recipient of this email, please notify the sender and destroy all copies of the original message. While this footnote confirms that this email message has been swept for the presence of computer viruses, we cannot take any responsibility for virus contamination.

 Please consider the environment before printing this e-mail.

---

## TO FINANCIAL ADVISORS

### 1. Current Status regarding LM First Mortgage Income Fund:

- FTI Consulting were appointed Administrators to LMIM.
- LMIM's licence has been suspended with ASIC allowing it a limited licence to do things that "are reasonably necessary for, or incidental, to the transfer to a new responsible entity, investigating or preserving the assets and affairs of, or winding up of " the Fund.
- Due to conflicts between LMIM and the LM Managed Performance Fund, the Supreme Court of Queensland removed LMIM as Trustee of the LM Managed Performance Fund and appointed a Korda Mentha subsidiary as Trustee. LMIM are still fighting in Court to stop Korda Mentha taking over as Trustee.

- In order to avoid similar conflicts as with the Managed Performance Fund, investors have applied to the Court to have Trilogy appointed as Temporary RE of the LM First Mortgage Income Fund, which, on success, would still require a meeting of unitholders within 90 days to appoint a permanent RE.
- After a series of adjournments requested by LMIM the Court hearing date was expected to be 13th May. The LMIM have continued to agitate for deferral and the new Court hearing date is now 15th July.

## **2. The 30th May meeting**

- LMIM have now called a unitholders meeting for 30<sup>th</sup> May. This is was called without consultation with Trilogy and Trilogy has legal advice that this meeting has been invalidly called. Following correspondence with LMIM's legal adviser it is still not clear if LMIM are retiring or seeking to be removed.

## **3. Receivership and Wind-up**

- Due to the Court delays ASIC is now suggesting that a receiver be appointed without unitholders having a say. This would possibly result in 3 fees, namely the RE fee, ASIC receiver's fee and Deutsche Bank receiver's fee.
- Given LMIM's now restrictive licence which prevents them from operating fully as a RE, LMIM have now announced to the court that they wish to wind up the Fund. The Court required an undertaking that no steps to wind-up are taken prior to the Court hearing on 15 July.

## **4. Trilogy's position:**

- Despite repeated requests Trilogy is yet to be supplied information that would show that the meeting called for 30th May is valid. Until LMIM can show this to be a validly called meeting we believe unitholders should not take any action.
- Trilogy in its capacity as RE of the Wholesale Fund and with the support of major unitholders does not believe it is in the interests of unitholders to wind up the Income Fund or appoint a receiver.
- If a receiver was to be appointed or the fund was to be wound up then unitholders should have a say in this.
- Unit holders interests are best served by appointing an independent RE of the Income Fund and there are provisions under the Corporations Act to allow this to happen given that LMIM now has a heavily restricted suspended licence.
- A new independent RE can manage down the loan book/security assets over time with the view to maximising recovery over time. A receivership winding up will negatively impact property valuations and sales and expose the Income Fund to multiple layers of fees.
- The chances of legal recovery for unit holders are enhanced with an independent RE given its ability to investigate and pursue legal recovery versus LMIM who will not sue themselves or open up the books and loan files for inspection.



- Given the continued reliance on LM Director valuations (since GFC) and the trajectory of the unit price (now \$0.55), legal recovery is likely to form a material part of the unit holders final recovery in the event that improper conduct is found.
- The conflicts pointed out by Chief Justice de Jersey in the Supreme Court of Qld when he denied FTI's appointment as Trustee of the Managed Performance Fund (Performance Fund), in favour of Korda Mentha, are also relevant to the Income Fund. The related party and related scheme lending between the Income Fund, Peter Drake entities and the Performance Fund are materially large and unit holder best interests can only be assured by the appointment of a truly independent RE. These conflicts, by contrast, should not be managed by a LM appointed administrator whose first priority is to maximise recovery to LM creditors and LM stakeholders ( including Peter Drake).
- It is imperative that there is an independent review of LMIM and its directors' actions so that Advisors and unitholders can understand the extent to which they may have been misled.

## 5. Conclusion

We will continue to work on behalf of all unitholders in the LM First Mortgage Income Fund to allow the Fund to have a clean break from LM and all the baggage that goes with it. We will keep you updated as we go forward.

Kind Regards

Rodger Bacon


Deputy Chairman

t 07 3039 2828 f 07 3039 2829  
Level 13, 241 Adelaide Street Brisbane QLD 4000 | GPO Box 1648 Brisbane QLD 4001  
w [www.trilogyfunds.com.au/monthlyincomefund](http://www.trilogyfunds.com.au/monthlyincomefund)

Error! Filename not specified.

\*IMPORTANT: This banner (current as of May 2013) is issued by Trilogry Funds Management Limited (AFSL 261425) and provides general information only. It does not provide financial product advice nor is it an offer of securities. Past performance is not a reliable indicator of future performance. Average annualised monthly rate is based on the current net daily yield on allocated units assuming re-investment of distributions and no exit fees.

This email message (including file attachments) may contain confidential or privileged information and is intended for the sole use of the addressee/s of this email only. If you are not an intended recipient of this email, please notify the sender and destroy all copies of the original message. While this footnote confirms that this email message has been swept for the presence of computer viruses, we cannot take any responsibility for virus contamination.

 Please consider the environment before printing this e-mail.

**ASIC**

Australian Securities &amp; Investments Commission

**Publications** > Regulatory documents

## Regulatory documents

Regulatory documents explain our approach in specific areas we regulate:

### **Consultation papers (CP)**

These documents seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

### **Regulatory guides (RG)**

These documents give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (for example, describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

### **Reports (REP)**

These documents describe ASIC compliance or relief activity or the results of a research project.

### **Information sheets (INFO)**

These documents provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

See also **Market Integrity Rules**

For information about Regulation Impact Statements (RIS) or enforceable undertakings see **Other resources**.

**Have a topic in mind?**

**Try our index (road map)**

ASIC Website: Printed 06/27/2013

## Balance Sheet

Product	Account	Name	Current year 1/07/2012 - 31/03/2013	Prior year 1/07/2011 - 30/06/2012
<b>ASSETS</b>				
<b>Current Assets</b>				
<b>Cash Assets</b>				
10104		FMIF-SUN UR WORK	1,613,089.61	299,370.56
10105		FMIF-DIST	0.00	593.65
10106		FMIF-SUN Unrestricted Deposit a/c	0.00	1.00
10107		FMIF-SUN R WORK	4,013,937.33	3,388,281.63
10108		FMIF-SUN Restricted Deposit a/c	1.00	1.01
10109		FMIF-SUN Capital Restricted a/c	2,646,566.78	4,109,040.81
10118		FMIF-NZW	0.00	8,171.84
10122		FMIF - NZD TRAVELEX	37,490.46	0.00
10123		FMIF - EUR TRAVELEX	6,793.19	0.00
10124		FMIF - USD TRAVELEX	2,505.56	0.00
10125		FMIF - GBP TRAVELEX	7,777.49	0.00
10127		FMIF - AED TRAVELEX	512.43	0.00
10128		FMIF - HKD TRAVELEX	125.15	0.00
10129		FMIF - JPY TRAVELEX	337.45	0.00
10130		FMIF - THB TRAVELEX	517.79	0.00
10190		FMIF-CUST - MARGIN ACC	185,428.51	224,281.20
10191		FMIF-HIFX - MARGIN ACC	86,427.74	93,685.89
			<b>8,601,510.49</b>	<b>8,123,427.59</b>
<b>Cash Assets</b>				
<b>Investments</b>				
<b>Receivables</b>				
13020		Interest Receivable - Loan Assets	0.00	1,159,377.48
			<b>0.00</b>	<b>1,159,377.48</b>
<b>Prepayments</b>				
14000		Management Fees - Prepaid / (Payable)	-37,878.73	-2,470,000.00
14010		Prepaid Advisor Trails	-26.00	0.00
			<b>-37,903.73</b>	<b>-2,470,000.00</b>
<b>Loans - Receivable</b>				
16000		Mortgage Loans	439,780,666.74	480,838,964.06
16010		Mortgage Loans - Impairment losses	-129,227,618.32	-146,285,463.23
			<b>310,553,038.42</b>	<b>334,573,500.83</b>
<b>Loans - Receivable</b>				
			<b>319,116,645.18</b>	<b>341,386,305.90</b>
<b>Current Assets</b>				
<b>Fixed Assets</b>				
<b>Property</b>				
			<b>319,116,645.18</b>	<b>341,386,305.90</b>
<b>ASSETS</b>				
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
20000		Accounts Payable (Fund Comms Payable)	4,993,585.91	4,575,021.78
20001		Other Payables	3,766.86	3,766.86
20003		Returned Investor Payments	43,347.02	23,740.25
20005		Accounts Payable (New)	251,584.93	257,917.66
20050		Trade - Settlements Payable / (Receivable)	92,087.77	1,503.63

## Balance Sheet

Product	Account	Name	Current year 1/07/2012 - 31/03/2013	Prior year 1/07/2011 - 30/06/2012
	20100	Adviser - Trail Commissions Payable (LEGACY)	0.00	772,221.15
	20160	Loan Management Fee Payable	0.00	2,073,205.81
	20170	Payable - Reimburse LMA for Fund Expenses	-161,000.00	28,982.98
	20300	Audit Fee Payable	0.00	208,556.00
	20310	Compliance Fees Payable	0.00	25,960.00
	20400	Distributions Payable	1,381,019.75	4,799,833.01
	20401	Investor Funds Payable (Redemptions)	656,723.57	269.97
	20402	Accrued Interest (Distributions)	6,031.33	6,201.52
	20550	Interest Payable - DB Facility	399,462.00	0.00
	20600	FEC Payable	0.02	129,191.79
	20720	Withholding Tax Payable	-28,612.69	-28,612.69
	20730	Tax Payable	-70,416.00	-91,838.12
	20740	GST Inputs	0.00	-331.88
		<b>Current Liabilities</b>	<b>7,567,570.47</b>	<b>12,795,589.72</b>
		<b>Loans &amp; Borrowings</b>		
	25200	Deutsche Bank (DB) Facility	27,000,000.00	39,610,078.00
		<b>Loans &amp; Borrowings</b>	<b>27,000,000.00</b>	<b>39,610,078.00</b>
		<b>LIABILITIES</b>	<b>-34,567,570.47</b>	<b>-52,405,667.72</b>
		<b>NET ASSETS</b>	<b>284,549,074.71</b>	<b>288,980,638.18</b>
		<b>EQUITY</b>		
		<b>Investor Funds</b>		
	30000	Investors Funds	480,854,036.03	488,789,013.68
		<b>Investor Funds</b>	<b>480,854,036.03</b>	<b>488,789,013.68</b>
		<b>Distributions</b>		
	35000	Distributions	-355,081,763.89	-355,400,088.44
		<b>Distributions</b>	<b>-355,081,763.89</b>	<b>-355,400,088.44</b>
		<b>Retained Earnings</b>	<b>155,591,712.94</b>	<b>244,192,331.27</b>
		<b>Net Income</b>	<b>6,185,089.53</b>	<b>-85,600,618.33</b>
		<b>EQUITY</b>	<b>-284,549,074.71</b>	<b>-288,980,638.18</b>

## Ledger statement by Ledger account

ACC	14000	Management Fees - Prepaid / (Payable)			
Date	Voucher	Transaction text	Currency	Amount currency	
1/07/2012		Opening bal:			
27/07/2012	GJ025534	MIF - Cash Pymt to LMA AUD	AUD	625,000.00	
17/08/2012	GJ025757	MIF - Cash Pymt to LMA AUD	AUD	625,000.00	
28/08/2012	GJ025866	MIF - Cash Pymt to LMA AUD	AUD	934,934.29	
30/08/2012	GJ026033	MIF - Cash Pymt to LMA AUD	AUD	80,000.00	
12/09/2012	GJ026207	MIF - Cash Pymt to LMA AUD	AUD	571,017.02	
21/09/2012	GJ026494	MIF - Cash Pymt to LMA AUD	AUD	241,180.13	
30/09/2012	GJ026607	MIF - Jul-Sep 12 Mgmt F AUD	AUD	-2,100,000.00	
30/09/2012	GJ026631	MIF - Offset debit balance AUD	AUD	55,257.98	
3/10/2012	GJ026640	MIF - \$625k Cash Pymt to AUD	AUD	625,000.00	
22/10/2012	GJ026860	MIF - Cash Pymt to LMA AUD	AUD	240,455.12	
31/10/2012	GJ027235	MIF - Mgmt Fee Exp/Pay AUD	AUD	-1,000,000.00	
16/11/2012	GJ027695	MIF - Cash pymt to LMA AUD	AUD	205,030.91	
21/11/2012	GJ027701	MIF - Cash pymt to LMA AUD	AUD	600,000.00	
30/11/2012	GJ027703	MIF - Cash pymt to LMA AUD	AUD	1,000,000.00	
30/11/2012	GJ027707	Funds trf to LMA for prmt AUD	AUD	9,382.26	
30/11/2012	GJ027802	MIF - Mgmt Fee Exp/Pay AUD	AUD	-379,925.00	
11/12/2012	GJ027803	MIF - \$500k cash paymer AUD	AUD	383,477.82	
18/12/2012	GJ027819	MIF - \$500k cash paymer AUD	AUD	500,000.00	
31/12/2012	GJ028221	Offset Dec Loan Mgmt F AUD	AUD	-220,167.19	
31/12/2012	GJ028251	MIF - Dec 12 Mgmt Fee E AUD	AUD	-377,442.79	
31/12/2012	GJ028478	MIF - Additional Dec 12 AUD	AUD	-148,200.55	
1/01/2013	GJ028323	MIF - Cash Pymt to LMA AUD	AUD	700,000.00	
17/01/2013	GJ028322	MIF - Cash Pymt to LMA AUD	AUD	290,000.00	
21/01/2013	GJ028325	MIF - Cash Pymt to LMA AUD	AUD	170,000.00	
31/01/2013	GJ028728	MIF - Jan 13 Mgmt Fee E AUD	AUD	-381,385.91	
31/01/2013	GJ028729	Offset Jan 13 Loan Mgmt AUD	AUD	-228,852.04	
20/02/2013	GJ028805	MIF - Cash Pymt to LMA AUD	AUD	350,000.00	
27/02/2013	GJ028945	MIF - Cash Pymt to LMA AUD	AUD	85,000.00	
28/02/2013	GJ028925	MIF - Cash Pymt to LMA AUD	AUD	71,000.00	
28/02/2013	GJ029042	MIF - Mgmt Fee Exp/Pay AUD	AUD	-370,052.01	
28/02/2013	GJ029051	Offset MIF Loan Mgt Fee AUD	AUD	-274,987.42	
5/03/2013	GJ028964	MIF - Cash Pymt to LMA AUD	AUD	150,000.00	
31/03/2013	GJ029419	MIF - March 13 Mgmt Fee AUD	AUD	-367,652.31	
31/03/2013	GJ029420	MIF - Loan Mgmt Fee Exp AUD	AUD	-230,949.04	
31/03/2013	GJ029422	REV MARCH 13 MIF - M AUD	AUD	367,652.31	
31/03/2013	GJ029424	FIX MIF - Mar 13 Mgmt F AUD	AUD	-367,652.31	
31/03/2013	GJ029425	REV MIF - Loan Mgmt Fee AUD	AUD	230,949.04	
31/03/2013	GJ029426	FIX MIF - Loan Mgmt Fee AUD	AUD	-230,949.04	
31/03/2013	GJ029428	REV MIF - Loan Mgmt Fee AUD	AUD	230,949.04	

31/03/2013

GJ029429 REV MIF - Loan Mgmt FeAUD

-230,949.04

31/03/2013

Ending balai

Total of transactions from 1/7/12	2,439,141.27
Less: Opening Balance from 1/7/12	2,470,000.00
CLOSING BALANCE AT 31/3/13	37,878.73

2:52:07 PM

Amount	Accumulated
	-2,865,580.61
625,000.00	-2,240,580.61
625,000.00	-1,615,580.61
934,934.29	-680,646.32
80,000.00	-600,646.32
571,017.02	-29,629.30
241,180.13	211,550.83
2,100,000.00	-1,888,449.17
55,257.98	-1,833,191.19
625,000.00	-1,208,191.19
240,455.12	-967,736.07
1,000,000.00	-1,967,736.07
205,030.91	-1,762,705.16
600,000.00	-1,162,705.16
1,000,000.00	-162,705.16
9,382.26	-153,322.90
379,925.00	-533,247.90
383,477.82	-149,770.08
500,000.00	350,229.92
220,167.19	130,062.73
377,442.79	-247,380.06
148,200.55	-395,580.61
700,000.00	304,419.39
290,000.00	594,419.39
170,000.00	764,419.39
381,385.91	383,033.48
228,852.04	154,181.44
350,000.00	504,181.44
85,000.00	589,181.44
71,000.00	660,181.44
370,052.01	290,129.43
274,987.42	15,142.01
150,000.00	165,142.01
367,652.31	-202,510.30
230,949.04	-433,459.34
367,652.31	-65,807.03
367,652.31	-433,459.34
230,949.04	-202,510.30
230,949.04	-433,459.34
230,949.04	-202,510.30

230,949.04	-433,459.34
	-433,459.34



**Australian Securities & Investments Commission**


028208422

**Form 388**

Corporations Act 2001  
294, 294B, 295, 298-301, 307, 308, 319, 321, 322  
Corporations Regulations  
1.0.08, 2M.3.01, 2M.3.03

# Copy of financial statements and reports

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

**Company/scheme details**

Company/scheme name

LM INVESTMENT MANAGEMENT LTD

ACN/ARSN/PIN/ABN

68 077 208 461

**Lodgement details**

An image of this form will be available as part of the public register.

Who should ASIC contact if there is a query about this form?

ASIC registered agent number (if applicable)

Firm/organisation

LM INVESTMENT MANAGEMENT LTD

Contact name/position description

GRANT FISCHER / CFO

Telephone number (during business hours)

(07) 55 844 506

Email address (optional)

Postal address

PO Box 465

Suburb/City

SURFERS PARADISE

State/Territory

QLD

Postcode

4217

**1 Reason for lodgement of statement and reports**

Tick appropriate box.

See Guide for definition of Tier 2 public company limited by guarantee

See Guide for definition of large proprietary company

See Guide for definition of small proprietary company

Dates on which financial year begins and ends

- ☐ A public company or a disclosing entity which is not a registered scheme or prescribed interest undertaking (A)
- ☐ A Tier 2 public company limited by guarantee (L)
- ☐ A registered scheme (B)
- ☐ Amendment of financial statements or directors' report (company) (C)
- ☐ Amendment of financial statements or directors' report (registered scheme) (D)
- ☐ A large proprietary company that is not a disclosing entity (H)
- ☐ A small proprietary company that is controlled by a foreign company for all or part of the period and where the company's profit or loss for the period is not covered by the statements lodged with ASIC by a registered foreign company, company, registered scheme, or disclosing entity (I)
- ☐ A small proprietary company, or a small company limited by guarantee that is requested by ASIC to prepare and lodge statements and reports (J)
- ☐ A prescribed interest undertaking that is a disclosing entity (K)

Financial year begins

01/07/11 to 30/06/12

Financial year ends

30/06/12

## 2 Details of large proprietary company

See Guide for definition of large and small proprietary companies.

If the company is a large proprietary company that is not a disclosing entity, please complete the following information as at the end of the financial year for which the financial statements relate:

A What is the consolidated revenue of the large proprietary company and the entities that it controls?

B What is the value of the consolidated gross assets of the large proprietary company and the entities that it controls?

C How many employees are employed by the large proprietary company and the entities that it controls?

D How many members does the large proprietary company have?

## 3 Auditor's or reviewer's report

Tick one box and complete relevant section(s)

Were the financial statements audited or reviewed?

☒ Audited - complete B only

☐ Reviewed - complete A and B

☐ No

If no, is there a class or other order exemption current for audit/review relief?

☐ Yes

☐ No

A. Reviewed

Is the reviewer a registered company auditor, or member of The Institute of Chartered Accountants in Australia, CPA Australia Limited, or National Institute of Accountants and holds a practising certificate issued by one of those bodies?

☐ Yes

☐ No

B. Audited or Reviewed

Is the opinion/conclusion in the report:

Modified? (The opinion/conclusion in the report is qualified, adverse or disclaimed)

☐ Yes

☒ No

Does the report contain an Emphasis of Matter and/or Other Matter paragraph?

☐ Yes

☒ No

#### 4 Details of current auditor or auditors

**Notes:**

- Registered schemes must advise ASIC of the appointment of an auditor on a Form 5137 Appointment of scheme auditor within 14 days of the appointment of the auditor.
- A public company limited by guarantee may, in some circumstances, have their accounts reviewed. These companies are still required to have an auditor and these details must be provided.

Auditor registration number (for individual auditor or authorised audit company)

Family name

Given name

or

Company name

ERNST + YOUNG

ACN/ABN

752 881 727 49

or

Firm name (if applicable)

Office, unit, level

Level 51

Street number and Street name

111 Eagle Street

Suburb/City

BRISBANE

State/Territory

QLD

Postcode

4000

Country (if not Australia)

Date of appointment

[D] [M] [Y]

A company may have two appointed auditors, provided that both auditors were appointed on the same date. Otherwise, an appointed auditor must resign, be removed or otherwise ceased before a subsequent appointment may be made.

Auditor registration number (for individual auditor or authorised audit company)

Family name

Given name

or

Company name

ACN/ABN

or

Firm name (if applicable)

Office, unit, level

Street number and Street name

Suburb/City

State/Territory

Postcode

Country (if not Australia)

## 5 Statements and reports to be attached to this form

Financial statements for the year (as required by s295(2) and accounting standards)

- Statement of comprehensive income, may also include a separate income statement for the year
- Statement of financial position as at the end of the year
- Statement of cash flows for the year
- Statement of changes in equity.

OR

If required by accounting standards — the consolidated statements of comprehensive income/income statement, financial position, cash flows and changes in equity.

Notes to financial statements (see s295(3))

- Disclosures required by the regulations
- Notes required by the accounting standards
- Any other information necessary to give a true and fair view (see s297).

The signed directors' declaration about the statements and notes (see s295(4)).

The signed directors' report for the year, including the copy of the auditor's or reviewer's independence declaration (see s298 to s300A).

Signed auditor's report or, where applicable, reviewer's report (see s301, s307 to s308).

Concise report (if any) (see s319).

### Signature

See Guide for details of signatory.

I certify that the attached documents marked ( ) are a true copy of the original reports required to be lodged under s319 of the Corporations Act 2001.

Name

EDWARD VAN DER HOVEN

Signature

Capacity

☒ Director

☐ Company secretary

Date signed

04/10/12

[D] [D] [M] [M] [Y] [Y]

### Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

Or lodge the form electronically by:

- visiting the ASIC website [www.asic.gov.au](http://www.asic.gov.au)
- using Standard Business Reporting enabled software. See [www.sbr.gov.au](http://www.sbr.gov.au) for more details.

For more information

Web [www.asic.gov.au](http://www.asic.gov.au)

Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)

Telephone 1300 300 630

**LM INVESTMENT MANAGEMENT LIMITED**

**A.B.N 68 077 208 461**

**FINANCIAL REPORT  
FOR THE YEAR ENDED 30 JUNE 2012**

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**FINANCIAL REPORT  
FOR THE YEAR ENDED 30 JUNE 2012**

<b>1</b>	<b>DIRECTORS' REPORT</b>	<b>1</b>
<b>2</b>	<b>AUDITOR'S INDEPENDENCE DECLARATION</b>	<b>6</b>
<b>3</b>	<b>STATEMENT OF COMPREHENSIVE INCOME</b>	<b>7</b>
<b>4</b>	<b>STATEMENT OF FINANCIAL POSITION</b>	<b>8</b>
<b>5</b>	<b>STATEMENT OF CHANGES IN EQUITY</b>	<b>9</b>
<b>6</b>	<b>STATEMENT OF CASH FLOWS</b>	<b>11</b>
<b>7</b>	<b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>	<b>12</b>
<b>8</b>	<b>DIRECTORS' DECLARATION</b>	<b>36</b>
<b>9</b>	<b>INDEPENDENT AUDIT REPORT</b>	<b>37</b>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' REPORT**

The Directors present their report on the consolidated entity ("Group") consisting of LM Investment Management Limited ("Company" or "LM") and the entities it controlled at the end of, or during, the year ended 30 June 2012.

**Directors**

The Directors of the Company during the year or since the end of the financial year and up to the date of this report are:

<b>Name</b>	<b>Period of directorship</b>
Mr Peter C Drake	Appointed on 31 January 1997
Ms Lisa Maree Darcy	Appointed on 12 September 2003, Resigned on 21 June 2012
Mr Eghard Van der Hoven	Appointed on 22 June 2006
Ms Francene Maree Mulder	Appointed on 30 September 2006
Mr John O'Sullivan	Appointed on 27 November 2007, Resigned on 19 September 2012
Mr Simon Tickner	Appointed on 18 September 2008, Resigned on 1 August 2012
Mr Grant Fisher	Appointed on 14 March 2012, Resigned on 12 August 2012
Ms Katherine Phillips	Appointed 13 July 2012

The Directors were in office from the beginning of the financial year until the date of this report, unless otherwise stated.

**Company Secretary**

Carolyn Hodge's qualifications include a Bachelor of Business, CPA, ACI and ICCMF.

Carolyn is the Company Secretary of LM since 2004 and is a member of the Compliance Committee and Funds Management Committee.

Carolyn has more than 17 years experience in accounting and finance management. Prior to joining LM in 2002, Carolyn held the position of Auditor for the Queensland Audit Office, Brisbane.

**Principal Activities**

LM Investment Management Limited is an Australian funds manager which operates both nationally and internationally from offices on the Gold Coast, Sydney, Hong Kong, New Zealand, United Kingdom and Dubai.

The Company is an unlisted public company that is 100% Australian owned and managed and is registered with the Australian Securities and Investments Commission (ASIC) as a Responsible Entity and Australian Financial Services Licensee. The Company also has an authorised representative agreement with a related party, Drake Pty Ltd to collect fees and other financial benefits on its behalf. The principal activity of Drake Pty Ltd is the provision of life insurance services.

The Group's principal activity is the provision of specialised Australian income products. The Group is committed to delivering professional and responsive financial services to Australia's business and property sectors and the investing public.

The international offices operate through wholly owned subsidiaries, LM Investment Management International Ltd ("LMIMI"), LM Investment Management New Zealand ("LM NZ"), LM Investment Management UK ("LM UK") and LM FZE. These companies are resident in each of the overseas countries and act as international distribution points for the Company's managed investment products.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' REPORT**

---

**Principal Activities (cont'd)**

The Company did not have any employees as at 30 June 2012 (2011: Nil). LM Investment Management International Ltd had five employees (2011: 3), LM Investment Management New Zealand had two employees (2011: 2), LM Investment Management UK had six employees (2011: 5) and LM FZE had two employee (2011: 1) as at the 30 June 2012. The Company has a service arrangement with a related entity, LM Administration Pty Ltd to perform various administration activities on its behalf including provision of staff and premises and administration and funds management services. LM Administration Pty Ltd's results are not consolidated into this financial report.

**Review of Operations and Operating Results**

The Group experienced a profit for the financial year, after providing for income tax, of \$571,248 (2011: Profit \$122,627).

The Company experienced a profit for the financial year, after providing for income tax, of \$53,076 (2011: Profit \$182,686).

The LM Group of companies, comprising LM Administration Pty Ltd and the consolidated entity, achieved an overall profit before tax of \$11.2 million for the financial year.

**Dividends Paid or Recommended**

In respect of the financial year ended 30 June 2012, dividends of \$350,000 (\$10,000 per fully paid share) (2011: \$350,000) fully franked to 100% at 30% corporate income tax rate were provided to the holder of fully paid ordinary shares on 30 June 2012.

**State of Affairs**

In the opinion of the Directors, there were no significant changes in the nature of the activities or the state of affairs of the Company or its controlled entities during the financial year.

**Likely Developments**

The Company and Group shall continue with the principal activities as stated above.

Further information about likely developments in the operations of the Group and the expected results of those operations in future financial years have not been included in this report as disclosure of such information would be likely to result in unreasonable prejudice to the Group.

**After Balance Date Events**

There has not been any matter or circumstance occurring subsequent to the end of the financial year that has significantly affected, or may significantly affect, the operations of the Group, the results of those operations, or the state of affairs of the Group in future financial years.

**Environmental Regulation**

As the Group's operations are of a passive nature, its activities do not have an effect on the physical environment. As a result it is not regulated by any significant environmental regulation under a law of the Commonwealth or of a State or Territory.



**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' REPORT**

**Information on Directors and Directors Interests**

The relevant interest of each director in the share capital of the companies within the Group, at the date of this report and their attendance at directors meetings, is as follows:

<b>Peter Charles Drake</b>	-	<b>Chief Executive Officer</b>
<b>Qualification and Experience</b>	-	Peter has been involved in the financial services industry since 1978.
<b>Special responsibilities</b>	-	Peter is principally responsible for the strategic vision, direction, the structured growth of LM and plays an integral role in all LM Committees.
<b>Interest in shares</b>	-	35 ordinary shares
<b>Directors meetings attended</b>	-	3 of 3
<b>Lisa Maree Darcy</b>	-	<b>Executive Director</b>
<b>Qualification and Experience</b>	-	Lisa holds a Bachelor of Business and she has more than 20 years experience in the banking and financial planning industry, including financial accounting and funds management.
<b>Special responsibilities</b>	-	Lisa is principally responsible for all overseeing accounting functions of both LM Investment Management Limited and its registered schemes and plays an integral role in LM's Committees.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	3 of 3
<b>Eghard Van der Hoven</b>	-	<b>Executive Director</b>
<b>Qualification and Experience</b>	-	Eghard holds a Master of Commerce, majoring in Economics, and a Bachelor of Commerce (Hons) in Economics, from University of Pretoria, South Africa. Eghard's sound understanding of the investment industry spanning almost 20 years includes extensive experience in stock broking, auditing, investment analysis, business strategy and policy planning.
<b>Special responsibilities</b>	-	Eghard is responsible for joint decisions in relation to the asset allocation, geographic spread allocation, cash flow, delivery rate forecasting and budgeting of LM's funds.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	3 of 3
<b>Francene Maree Mulder</b>	-	<b>Executive Director</b>
<b>Qualification and Experience</b>	-	20 year career in the commercial, legal and securities sectors.
<b>Special responsibilities</b>	-	Francene is primarily responsible for the marketing and expansion of distribution of LM's products on a wholesale and retail basis, throughout Australia and international markets.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	3 of 3

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' REPORT**

**Information on Directors and Directors Interests (cont'd)**

<b>John O'Sullivan</b>		<b>Non-Executive Director</b>
<b>Qualification and Experience</b>	-	20 years experience in the funds management and investment services sectors of New Zealand, Europe, Asia and Australia.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	3 of 3
<b>Simon Tickner</b>	-	<b>Executive Director</b>
<b>Qualification and Experience</b>	-	20 year career in trading and broking financial derivatives in London's money markets and extensive knowledge of Australia's property markets.
<b>Special responsibilities</b>	-	Simon is responsible for sourcing and assessing new lending opportunities, within the Australian property market.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	3 of 3
<b>Grant Fisher</b>	-	<b>Executive Director</b>
<b>Qualification</b>	-	Certified Practising Accountant (CPA) and Grant holds a Bachelor of Commerce and Master of Commerce, majoring in Accounting and Taxation.
<b>Experience</b>	-	Grant's has over 20 years' experience as a financial executive in many different industries with extensive exposure to business operations within the Asia Pacific region.
<b>Special responsibilities</b>	-	Grant is responsible for the overall financial management of LM and its registered schemes. Grant works closely with the CEO and Board to position LM for further growth.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	2 of 3
<b>Katharine Phillips</b>	-	
<b>Qualification and Experience</b>	-	Katherine has 12 years' experience in international funds management and investment services.
<b>Special responsibilities</b>	-	Katherine is responsible for the strategic marketing direction and operations of LM in global markets, and is actively involved with marketing strategy, product design and client communication.
<b>Interest in shares</b>	-	None
<b>Directors meetings attended</b>	-	0 of 3

**Options**

No options over unissued shares or interests in the Company were granted during or since the end of the financial year and there were no options outstanding at the date of this report.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' REPORT**

---

**Indemnification and Insurance of Officers and Directors**

*Indemnification*

Since the end of the previous financial year, the Company has not indemnified or made a relevant agreement for indemnifying against a liability, any person who is or has been an officer of the Company.

*Insurance premiums*

During the financial year, the Company has paid premiums in respect of the directors or executive officers for liability and legal expenses insurance contracts for the year ended 30 June 2012. The Company has paid or agreed to pay in respect of the Company, premiums in respect of such insurance contracts for the year ended 30 June 2012. Such insurance contracts insure against certain liability (subject to specific exclusions) for persons who are or have been the directors or executive officers of the Company.

Details of the nature of the liabilities covered or the amount of the premium paid has not been included as such disclosure is prohibited under the terms of the contracts.

**Proceedings on behalf of Company**

No person has applied for leave of court to bring proceedings on behalf of the Company or intervene in any proceedings to which the Company is a party for the purpose of taking responsibility on behalf of the Company for all or any part of those proceedings.

The Company was not party to any such proceedings during the year.

**Auditor's Independence Declaration**

A copy of the auditor's independence declaration as required under section 307C of the Corporations Act 2001 is set out on the following page.

**Auditor**

Ernst & Young continues in office in accordance with section 327 of the Corporations Act 2001.

This report is made in accordance with a resolution of directors, pursuant to section 298(2)(a) of the Corporations Act 2001.

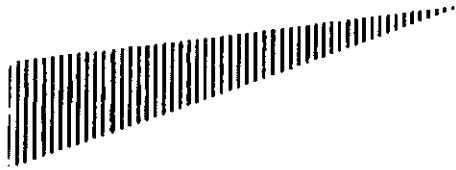
On behalf of the directors

---

**Eghard Van der Hoven**  
Director

4 October 2012  
Gold Coast



**ERNST & YOUNG**

111 Eagle Street  
Brisbane QLD 4000 Australia  
GPO Box 7878 Brisbane QLD 4001  
Tel: +61 7 3011 3333  
Fax: +61 7 3011 3100  
www.ey.com/au

## **Auditor's Independence Declaration to the Directors of LM Investment Management Limited**

In relation to our audit of the financial report of LM Investment Management Limited for the financial year ended 30 June 2012, to the best of my knowledge and belief, there have been no contraventions of the auditor independence requirements of the *Corporations Act 2001* or any applicable code of professional conduct.

*Ernst & Young*

Ernst & Young

*P McLuskie*

Paula McLuskie  
Partner  
Brisbane  
4 October 2012

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**STATEMENT OF COMPREHENSIVE INCOME**  
**FOR THE YEAR ENDED 30 JUNE 2012**

		Consolidated		Parent	
	Note	2012	2011	2012	2011
		\$	\$	\$	\$
Revenue from ordinary activities	3a	13,597,207	16,005,444	13,597,207	15,992,679
Other revenue	3b	58,255	63,392	58,195	58,530
Administration charges	4a	(3,978,004)	(6,903,455)	(3,978,004)	(6,903,455)
Changes in fair value of investment in joint venture	12	-	(296,703)	-	(296,703)
Depreciation expense	4b	(72,029)	(56,871)	-	-
Directors remuneration	21	(389,230)	(328,650)	-	-
Employee benefits expense	4c	(2,048,434)	(1,508,058)	-	-
Finance costs	4d	(30,546)	(24,003)	(30,414)	(23,504)
Other expenses from ordinary activities	4e	(6,657,141)	(6,974,931)	(9,710,391)	(8,820,571)
Share of net profit of equity accounted investment		169,180	267,805	169,180	267,805
<b>Profit before income tax</b>		<b>649,258</b>	<b>243,970</b>	<b>105,773</b>	<b>274,781</b>
Income tax expense	5	(96,668)	(74,415)	(52,697)	(92,095)
<b>Profit for the period</b>		<b>552,590</b>	<b>169,555</b>	<b>53,076</b>	<b>182,686</b>
<b>Other comprehensive income</b>					
Foreign currency translation differences for foreign operations		18,658	(46,928)	-	-
Income tax on other comprehensive income		-	-	-	-
<b>Other comprehensive income for the period, net of income tax</b>		<b>18,658</b>	<b>(46,928)</b>	<b>-</b>	<b>-</b>
<b>Total comprehensive income for the period</b>		<b>571,248</b>	<b>122,627</b>	<b>53,076</b>	<b>182,686</b>
<b>Total comprehensive income attributable to owners of the Company</b>		<b>571,248</b>	<b>122,627</b>	<b>53,076</b>	<b>182,686</b>

*The above statement of comprehensive income should be read in conjunction with the accompanying notes.*

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**STATEMENT OF FINANCIAL POSITION**  
**AS AT 30 JUNE 2012**

		Consolidated		Parent	
	Note	2012 \$	2011 \$	2012 \$	2011 \$
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash and cash equivalents	7	1,114,289	1,128,757	1,059,430	1,061,590
Trade and other receivables	8	499,503	293,802	726,879	1,143,054
Other assets	9	352,253	320,086	26,736	27,181
<b>Total Current Assets</b>		<b>1,966,045</b>	<b>1,742,645</b>	<b>1,813,045</b>	<b>2,231,825</b>
<b>Non-Current Assets</b>					
Investment in associates	10	4,631,927	4,467,785	4,631,927	4,467,785
Investments in subsidiaries	11	-	-	544,717	544,717
Investment properties	12	769,500	769,500	769,500	769,500
Property, plant and equipment	13	208,005	193,857	-	-
Deferred tax assets	15	129,557	148,503	89,111	89,111
<b>Total Non-Current Assets</b>		<b>5,738,989</b>	<b>5,579,645</b>	<b>6,035,255</b>	<b>5,871,113</b>
<b>TOTAL ASSETS</b>		<b>7,705,034</b>	<b>7,322,290</b>	<b>7,848,300</b>	<b>8,102,938</b>
<b>LIABILITIES</b>					
<b>Current Liabilities</b>					
Trade and other payables	14	324,027	142,709	226,959	82,457
Income tax payable	15	55,899	157,227	45,398	154,913
Provisions	16	100,419	29,007	-	-
<b>Total Current Liabilities</b>		<b>480,345</b>	<b>328,943</b>	<b>272,357</b>	<b>237,370</b>
<b>Non-Current Liabilities</b>					
Deferred tax liabilities	15	903,793	893,699	900,998	893,699
<b>Total Non-Current Liabilities</b>		<b>903,793</b>	<b>893,699</b>	<b>900,998</b>	<b>893,699</b>
<b>TOTAL LIABILITIES</b>		<b>1,384,138</b>	<b>1,222,642</b>	<b>1,173,355</b>	<b>1,131,069</b>
<b>NET ASSETS</b>		<b>6,320,896</b>	<b>6,099,648</b>	<b>6,674,945</b>	<b>6,971,869</b>
<b>EQUITY</b>					
Contributed equity	17	1,032,012	1,032,012	1,032,012	1,032,012
Reserves	18	(30,462)	(49,120)	-	-
Retained profits		5,319,346	5,116,756	5,642,933	5,939,857
<b>TOTAL EQUITY</b>		<b>6,320,896</b>	<b>6,099,648</b>	<b>6,674,945</b>	<b>6,971,869</b>

*The above statement of financial position should be read in conjunction with the accompanying notes.*

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**STATEMENT OF CHANGES IN EQUITY**  
**FOR THE YEAR ENDED 30 JUNE 2012**

	Note	Attributable to equity holders of the parent			Total
		Ordinary share capital	Foreign currency translation	Retained earnings	
		\$	\$	\$	\$
<b>Consolidated</b>					
<b>Balance at 1 July 2010</b>		1,032,012	(2,192)	5,297,201	6,327,021
Profit for the year attributable to members		-	-	169,555	169,555
Foreign currency translation differences		-	(46,928)	-	(46,928)
<b>Total Comprehensive Income</b>		<b>1,032,012</b>	<b>(49,120)</b>	<b>5,466,756</b>	<b>6,449,648</b>
Issue of ordinary shares		-	-	-	-
Payment of dividends	6	-	-	(350,000)	(350,000)
<b>Balance at 30 June 2011</b>		<b>1,032,012</b>	<b>(49,120)</b>	<b>5,116,756</b>	<b>6,099,648</b>
Profit for the year attributable to members		-	-	552,590	552,590
Foreign currency translation differences		-	18,658	-	18,658
<b>Total Comprehensive Income</b>		<b>1,032,012</b>	<b>(30,462)</b>	<b>5,669,346</b>	<b>6,670,896</b>
Issue of ordinary shares	17a	-	-	-	-
Payment of dividends	6	-	-	(350,000)	(350,000)
<b>Balance at 30 June 2012</b>		<b>1,032,012</b>	<b>(30,462)</b>	<b>5,319,346</b>	<b>6,320,896</b>

*The above statement of changes in equity should be read in conjunction with the accompanying notes.*

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**STATEMENT OF CHANGES IN EQUITY**  
**FOR THE YEAR ENDED 30 JUNE 2012**

	Note	Attributable to equity holders of the parent			Total
		Ordinary share capital	Foreign currency translation	Retained earnings	
		\$	\$	\$	\$
<b>Parent</b>					
<b>Balance at 1 July 2010</b>		1,032,012	-	6,107,171	7,139,183
Profit for the year attributable to members		-	-	182,686	182,686
<b>Total Comprehensive Income</b>		1,032,012	-	6,289,857	7,321,869
Issue of ordinary shares		-	-	-	-
Payment of dividends	6	-	-	(350,000)	(350,000)
<b>Balance at 30 June 2011</b>	17	1,032,012	-	5,939,857	6,971,869
Profit for the year attributable to members		-	-	53,076	53,076
<b>Total Comprehensive Income</b>		1,032,012	-	5,992,933	7,024,945
Issue of ordinary shares	17a	-	-	-	-
Payment of dividends	6	-	-	(350,000)	(350,000)
<b>Balance at 30 June 2012</b>		1,032,012	-	5,642,933	6,674,945

*The above statement of changes in equity should be read in conjunction with the accompanying notes.*



**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**STATEMENT OF CASH FLOWS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

		<b>Consolidated</b>		<b>Parent</b>	
	<b>Note</b>	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
		<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Cash flows from operating activities</b>					
Receipts from customers		14,996,014	17,617,775	15,113,136	17,593,273
Interest received		61,348	59,856	61,287	59,854
Payments to suppliers and employees		(14,322,539)	(17,014,968)	(14,672,295)	(17,231,131)
Interest paid		(28,881)	(24,003)	(28,751)	(23,503)
Income tax (paid)/ refunded		(159,808)	(72,065)	(151,360)	(254,632)
<b>Net cash flows from/(used in) operating activities</b>	<b>20b</b>	<b>546,134</b>	<b>566,595</b>	<b>322,017</b>	<b>143,861</b>
<b>Cash flows from investing activities</b>					
Payment for property, plant and equipment		(86,174)	(146,982)	-	-
Proceeds/ (payments) from/ (to) investment in jointly controlled entity		87,877	(69,599)	87,877	(69,599)
Proceeds/ (payments) from/ (to) subsidiaries and related party loans		(580,963)	(516,109)	(412,054)	(294,269)
<b>Net cash used in investing activities</b>		<b>(579,260)</b>	<b>(732,690)</b>	<b>(324,177)</b>	<b>(363,868)</b>
<b>Net increase/(decrease) from/(used) cash and cash equivalents</b>		<b>(33,126)</b>	<b>(166,095)</b>	<b>(2,160)</b>	<b>(220,007)</b>
Net foreign exchange differences		18,658	(46,928)	-	-
<b>Cash and cash equivalents at beginning of period</b>		<b>1,128,757</b>	<b>1,341,780</b>	<b>1,061,590</b>	<b>1,281,597</b>
<b>Cash and cash equivalents at end of period</b>	<b>20a</b>	<b>1,114,289</b>	<b>1,128,757</b>	<b>1,059,430</b>	<b>1,061,590</b>

*The above statement of cash flows should be read in conjunction with the accompanying notes.*

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**1 CORPORATE INFORMATION**

The financial report of LM Investment Management Limited for the year ended 30 June 2012 was authorised for issue in accordance with a resolution of the directors on 4 October 2012.

The financial report includes the separate financial statements of LM Investment Management Limited ("Company") as an individual entity and the consolidated entity ("Group") consisting of LM Investment Management Limited and its subsidiaries. LM Investment Management Limited is an unlisted public for-profit company, incorporated and domiciled in Australia.

The nature of the operations and principal activities of the Group are described in the Directors' Report.

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The following is a summary of the material accounting policies adopted by the Group in the preparation of the financial report. These policies have been consistently applied to all period presented, unless otherwise stated.

**(a) Basis of Preparation**

The Group has early adopted AASB 1053 Application of Tiers of Australian Accounting Standards and AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements for the financial year beginning on 1 July 2011. The Group is a for-profit, private sector entity which is not publicly accountable. Therefore the consolidated financial statements of the Group are tier 2 general purpose financial statements which have been prepared in accordance with Australian Accounting Standards – Reduced Disclosure Requirements (AASB – RDRs) (including Australian Interpretations) adopted by the Australian Accounting Standards Board (AASB) and the Corporations Act 2001.

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

*Historical cost convention*

The financial statements have been prepared under the historical cost convention.

*Critical accounting estimates*

The preparation of the financial statements requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the consolidated entity's accounting policies. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements, are disclosed in note 1(v).

**(b) New, revised or amending Accounting Standards and Interpretations adopted**

The consolidated entity has adopted all of the new, revised or amending Accounting Standards and interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

The consolidated entity has early adopted AASB 1053 'Application of Tiers of Australian Accounting Standards' and AASB 2010-02 'Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements'. No other new, revised or amending Accounting Standards or Interpretations that are not yet mandatory have been early adopted.

Any significant impact on the accounting policies of the consolidated entity from the adoption of these Accounting Standards and Interpretations are disclosed in the relevant accounting policy.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(b) New, revised or amending Accounting Standards and Interpretations adopted (cont'd)**

The adoption of these Accounting Standards and Interpretations did not have any impact on the financial performance or position of the consolidated entity. The following Accounting Standards and Interpretations are most relevant to the consolidated entity:

***AASB 1053 Application of Tiers of Australian Accounting Standards***

The consolidated entity has early adopted AASB 1053 from 1 July 2011. This standard establishes a differential financial reporting framework consisting of two Tiers of reporting requirements for preparing general purpose financial statements, being Tier 1 Australian Accounting Standards and Tier 2 Australian Accounting Standards - Reduced Disclosure Requirements. The consolidated entity being classed as Tier 2 continues to apply the full recognition and measurements requirements of Australian Accounting Standards with substantially reduced disclosure in accordance with AASB 2010-2.

***AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements***

The consolidated entity has early adopted AASB 2010-2 from 1 July 2011. These amendments make numerous modifications to a range of Australian Accounting Standards and Interpretations, to introduce reduced disclosure requirements to the pronouncements for application by certain types of entities in preparing general purpose financial statements. The adoption of these amendments has significantly reduced the consolidated entity's disclosure requirements.

***AASB 2011-1 Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project and AASB 2011-2 Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project – Reduced Disclosure Requirements***

The consolidated entity has applied AASB 2011-1 and 2011-2 amendments from 1 July 2011. These amendments made changes to a range of Australian Accounting Standards and Interpretations for the purpose of closer alignment to International Financial Reporting Standards (IFRSs) and harmonisation between Australian and New Zealand Standards. The amendments removed certain guidance and definitions from Australian Accounting Standards for conformity of drafting with IFRSs but without any intention to change requirements.

***AASB 2011-5 Amendments to Australian Accounting Standards – Extending Relief from Consolidation, the Equity Method and Proportionate Consolidation and AASB 2011-6 Amendments to Australian Accounting Standards – Extending Relief from Consolidation, the Equity Method and Proportionate Consolidation – Reduced Disclosure Requirements***

The consolidated entity has applied AASB 2011-5 and 2011-6 amendments from 1 July 2011. These amendments extended relief from consolidation, the equity method and proportionate consolidation where the ultimate or intermediate parent applied not-for-profit Aus paragraphs in Australian IFRSs as adopted in Australia, or Australian Accounting Standards – Reduced Disclosure Requirements (RDR).

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(c) Basis of Consolidation**

Subsidiaries are all those entities over which the Group has the power to govern the financial and operating policies so as to obtain benefits from their activities. The existence and effect of potential voting rights that are currently exercisable or convertible are considered when assessing whether a group controls another entity. Details of the subsidiaries are contained in Note 19.

The financial statements of subsidiaries are prepared for the same reporting period as the Parent entity, using consistent accounting policies.

In preparing the consolidated financial statements, all intercompany balances and transactions, income and expenses and profit and losses resulting from intra-group transactions have been eliminated in full.

Subsidiaries are fully consolidated from the date on which control is obtained by the Group and cease to be consolidated from the date on which control is transferred out of the Group.

Investments in subsidiaries held by LM Investment Management Limited are accounted for at cost in the separate financial statements of the parent entity less any impairment charges. Dividends received from subsidiaries are recorded as a component of other revenues in the separate statement of comprehensive income of the parent entity, and do not impact the recorded cost of the investment. Upon receipt of dividend payments from subsidiaries, the parent will assess whether any indicators of impairment of the carrying value of the investment in the subsidiary exist. Where such indicators exist, to the extent that the carrying value of the investment exceeds its recoverable amount, an impairment loss is recognised.

The acquisition of subsidiaries is accounted for using the acquisition method of accounting. The acquisition method of accounting involves recognising at acquisition date, separately from goodwill, the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree. The identifiable assets acquired and the liabilities assumed are measured at their acquisition date fair values.

The difference between the above items and the fair value of the consideration (including the fair value of any pre-existing investment in the acquiree) is goodwill or a discount on acquisition.

A change in the ownership interest of a subsidiary that does not result in a loss of control, is accounted for as an equity transaction.

Non-controlling interests are allocated their share of net profit after tax in the statement of comprehensive income and are presented within equity in the consolidated statement of financial position, separately from the equity of the owners of the parent.

Losses are attributed to the non-controlling interest even if that results in a deficit balance.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(c) Basis of Consolidation (cont'd)**

If the Group loses control over a subsidiary, it:

- Derecognises the assets (including goodwill) and liabilities of the subsidiary.
- Derecognises the carrying amount of any non-controlling interest.
- Derecognises the cumulative translation differences, recorded in equity.
- Recognises the fair value of the consideration received.
- Recognises the fair value of any investment retained.
- Recognises any surplus or deficit in profit or loss.
- Reclassifies the parent's share of components previously recognised in other comprehensive income to profit or loss.

**(d) Income Tax**

Current tax assets and liabilities for the current and prior periods are measured at the amount expected to be recovered from or paid to the taxation authorities based on the current period's taxable income. The tax rates and tax laws used to compute the amount are those that are enacted or substantively enacted by the reporting date.

Current income tax relating to items recognised directly in equity is recognised in equity and not in the income statement. Management periodically evaluates positions taken in the tax returns with respect to situations in which applicable tax regulations are subject to interpretation and establishes provisions where appropriate.

Deferred income tax is provided on all temporary differences at the balance date between the tax bases of assets and liabilities and their carrying amounts for financial reporting purposes.

Deferred income tax liabilities are recognised for all taxable temporary differences except:  
when the deferred income tax liability arises from the initial recognition of goodwill or of an asset or liability in a transaction that is not a business combination and that, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss; or

when the taxable temporary difference is associated with investments in subsidiaries, associates or interests in joint ventures, and the timing of the reversal of the temporary difference can be controlled and it is probable that the temporary difference will not reverse in the foreseeable future.

Deferred income tax assets are recognised for all deductible temporary differences, carry forward of unused tax credits and unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences and the carry forward of unused tax credits and unused tax losses can be utilised, except:

when the deferred income tax asset relating to the deductible temporary difference arises from the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss; or

when the deductible temporary difference is associated with investments in subsidiaries or interests in joint ventures, in which case a deferred tax asset is only recognised to the extent that it is probable that the temporary difference will reverse in the foreseeable future and taxable profit will be available against which the temporary difference can be utilised.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(d) Income Tax (cont'd)**

The carrying amount of deferred income tax assets is reviewed at each balance date and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred income tax asset to be utilised.

Unrecognised deferred income tax assets are reassessed at each balance date and are recognised to the extent that it has become probable that future taxable profit will allow the deferred tax asset to be recovered.

Deferred income tax assets and liabilities are measured at the tax rates that are expected to apply to the year when the asset is realised or the liability is settled, based on tax rates (and tax laws) that have been enacted or substantively enacted at the balance date.

Deferred tax assets and deferred tax liabilities are offset only if a legally enforceable right exists to set off current tax assets against current tax liabilities and the deferred tax assets and liabilities relate to the same taxable entity and the same taxation authority.

**(e) Property, Plant and Equipment**

Each class of property, plant and equipment is carried at cost or fair value less, where applicable, any accumulated depreciation and impairment losses.

*Plant and equipment*

Plant and equipment is stated at historical cost less accumulated depreciation and any accumulated impairment losses.

The carrying amount of plant and equipment is reviewed annually by directors to ensure it is not in excess of the recoverable amount from these assets. The recoverable amount is assessed on the basis of the expected net cash flows which will be received from the assets employment and subsequent disposal. The expected net cash flows have not been discounted to their present values in determining recoverable amounts.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance are charged to the statement of comprehensive income during the financial period in which they are incurred.

Increases in the carrying amount arising on revaluation of land and buildings are credited, net of tax, to a revaluation reserve in equity. To the extent that the increase reverses a decrease previously recognised in profit or loss, the increase is first recognised in profit or loss. Decreases that reverse previous increases of the same asset are first charged against revaluation reserves directly in equity to the extent of the remaining reserve attributable to the asset; all other decreases are charged to the statement of comprehensive income. Each year, the difference between depreciation based on the revalued carrying amount of the asset charged to the statement of comprehensive income and depreciation based on the asset's original cost, net of tax, is transferred from the property, plant and equipment revaluation reserve to retained earnings.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(e) Property, Plant and Equipment (cont'd)**

*Derecognition*

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

*Depreciation*

The depreciable amount of all fixed assets including capitalised leased assets is depreciated on a straight-line basis over their useful lives to the Group commencing from the time the asset is held ready for use. Properties held for investment purposes are not subject to depreciation. Leasehold improvements are depreciated over the shorter of either the unexpired period of the lease or the estimated useful lives of the improvements.

The depreciation rates for each class of depreciable assets are:

<i>Class of Fixed Asset</i>	<i>Depreciation Rate</i>
Plant and Equipment	20% - 33.33%
Leasehold Improvements	Based on the term of the lease

The asset's residual values and useful lives are reviewed, and adjusted if appropriate, at each financial year end.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount and the impairment write down recognised in the statement of comprehensive income.

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount. These gains and losses are included in the statement of comprehensive income. When revalued assets are sold, amounts included in the revaluation reserve relating to that asset are transferred to retained earnings.

**(f) Investment Properties**

Investment properties including freehold and leasehold complexes, are held to generate long-term rental yields and/or for capital appreciation. All tenant leases are on an arm's length basis. Investment properties are measured initially at cost, including transaction costs. Subsequent to initial recognition, investment property is carried at fair value, determined when required based on director's valuation. Changes to fair value are recorded in the statement of comprehensive income as other income in the year in which they arise.

Investment properties are derecognised either when they have been disposed of or when the investment property is permanently withdrawn from use and no future economic benefit is expected from its disposal. Any gains or losses on the retirement or disposal of an investment property are recognised in profit or loss in the year of retirement or disposal.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(f) Investment Properties (cont'd)**

Transfers are made to investment property when, and only when, there is a change in use, evidenced by ending of owner-occupation, commencement of an operating lease to another party or ending of construction or development. Transfers are made from investment property when, and only when, there is a change in use, evidenced by commencement of owner-occupation or commencement of development with a view to sale.

For a transfer from investment property to owner-occupied property, the deemed cost of property for subsequent accounting is its fair value at the date of change in use. If the property occupied by the Group as an owner-occupied property becomes an investment property, the Group accounts for such property in accordance with the policy stated under Property, plant and equipment up to the date of change in use.

**(g) Leases**

Finance leases, which transfer to the Group substantially all the risks and benefits incidental to ownership of the leased item, are capitalised at the inception of the lease at the fair value of the leased asset or, if lower, at the present value of the minimum lease payments. Lease payments are apportioned between the finance charges and reduction of the lease liability so as to achieve a constant rate of interest on the remaining balance of the liability. Finance charges are recognised as an expense in profit or loss.

Capitalised leased assets are depreciated over the shorter of the estimated useful life of the asset and the lease term if there is no reasonable certainty that the Group will obtain ownership by the end of the lease term.

Operating lease payments are recognised as an expense in the statement of comprehensive income on a straight-line basis over the lease term. Operating lease incentives are recognised as a liability when received and subsequently reduced by allocating lease payments between rental expense and reduction of the liability.

**(h) Investments In Jointly Controlled Entities**

Investments in jointly controlled entities in which the Parent entity is a venturer (and so has joint control) are accounted for using the equity method. Under the equity method, the share of profits or losses of the partnership is recognised in the statement of comprehensive income, and the share of movements in reserves is recognised under reserves in the statement of financial position. The carrying amount of non-current investments is reviewed annually by the Directors to ensure it is not in excess of the recoverable amount of these investments.

**(i) Investments and Other Financial Assets**

Investments and other financial assets in the scope of *AASB 139 Financial Instruments: Recognition and Measurement* are categorised as either financial assets at fair value through profit or loss, loans and receivables, held-to-maturity investments, or available-for-sale financial assets. The classification depends on the purpose for which the investments were acquired. Designation is re-evaluated at each financial year end, but there are restrictions on reclassifying to other categories.



**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(i) Investments and Other Financial Assets (cont'd)**

*Recognition*

Financial assets are initially measured at fair value plus, in the case of assets not at fair value through profit or loss, directly attributable transaction costs. Subsequent to initial recognition these assets are measured as set out below.

All regular way purchases and sales of financial assets are recognised on the trade date i.e., the date that the Group commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the market place. Financial assets are derecognised when the right to receive cash flows from the financial assets has expired or when the entity transfers substantially all the risks and rewards of the financial assets. If the entity neither retains nor transfers substantially all of the risks and rewards, it derecognises the asset if it has transferred control of the assets.

*Financial assets at fair value through profit and loss*

Financial assets at fair value through profit or loss are financial assets held for trading. A financial asset is classified in this category if acquired principally for the purpose of selling in the near term with the intention of making a profit or if so designated by management and within the requirements of AASB 139: *Recognition and Measurement of Financial Instruments*. Realised and unrealised gains and losses arising from changes in the fair value of these assets are included in the statement of comprehensive income in the period in which they arise and the related assets are classified as current assets in the statement of financial position.

*Loans and receivables*

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are carried at amortised cost using the effective interest method. Gains and losses are recognised in the statement of comprehensive income when the loans and receivables are derecognised or impaired. These are included in current assets, except for those with maturities greater than 12 months after balance date, which are classified as non-current.

*Held-to-maturity investments*

Held-to-maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturities that the Group's management has the positive intention and ability to hold to maturity. Investments intended to be held for an undefined period are not included in this classification. Such assets are carried at amortised cost using the effective interest method. This cost is computed as the amount initially recognised minus principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between the initially recognised amount and the maturity amount. This calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate, transaction costs and all other premiums and discounts.

For investments carried at amortised cost, gains and losses are recognised in profit or loss when the investments are derecognised or impaired, as well as through the amortisation process.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(i) Investments and Other Financial Assets (cont'd)**

*Available-for-sale investments*

Available-for-sale investments are those non-derivative financial assets, principally equity securities, that are designated as available-for-sale or are not classified as any of the three preceding categories. Such assets are measured at fair value with gains or losses being recognised as a separate component of equity until the investment is derecognised or until the investment is determined to be impaired, at which time the cumulative gain or loss previously reported in equity is recognised in profit or loss.

*Fair value*

The fair values of investments that are actively traded in organised financial markets are determined by reference to quoted market bid prices at the close of business on the balance date. For investments with no active market, fair values are determined using valuation techniques. Such techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cash flow analysis and option pricing models making as much use of available and supportable market data as possible and keeping judgemental inputs to a minimum.

*Impairment*

At each reporting date, the Group assess whether there is objective evidence that a financial instrument has been impaired. In the case of equity securities classified as available-for-sale, a significant or prolonged decline in the fair value of a security below its cost is considered as an indicator that the securities are impaired. If any such evidence exists for available-for-sale financial assets, the cumulative loss - measured as the difference between the acquisition cost and the current fair value, less any impairment loss on that financial asset previously recognised in profit or loss - is removed from equity and recognised in the statement of comprehensive income. Impairment losses recognised in the statement of comprehensive income on equity instruments classified as available-for-sale are not reversed through the statement of comprehensive income.

If there is evidence of impairment for any of the Group's financial assets carried at amortised cost, the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows, excluding future credit losses that have not been incurred. The cash flows are discounted at the financial asset's original effective interest rate. The loss is recognised in the statement of comprehensive income.

**(j) Impairment of Assets**

Assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. At each reporting date, the Group reviews the carrying values of its assets to determine whether there is any indication that those assets have been impaired. External factors, such as changes in expected future processes, technology and economic conditions, are also monitored to assess for indicators of impairment. If such an indication exists, the recoverable amount of the asset, being the higher of the asset's fair value less costs to sell and value in use, is compared to the asset's carrying value. Any excess of the asset's carrying value over its recoverable amount is expensed to the statement of comprehensive income.

Where it is not possible to estimate the recoverable amount of an individual asset, the Group estimates the recoverable amount of the cash-generating unit to which the asset belongs.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(k) Foreign Currency Transactions and Balances**

*Functional and Presentation Currency*

The functional currency of each of the group's entities is measured using the currency of the primary economic environment in which that entity operates. The consolidated financial statements are presented in Australian dollars which is the parent entity's functional and presentation currency. The Hong Kong subsidiary's functional currency is Hong Kong Dollars, New Zealand subsidiary's functional currency is New Zealand Dollars, United Kingdom subsidiary's functional currency is Sterling pounds, and the Dubai subsidiary's functional currency is United Arab Emirates Dirham which are all translated to the presentation currency.

*Transaction and Balances*

Transactions in foreign currencies are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are retranslated at the rate of exchange ruling at the balance date. Non-monetary items measured at historical cost continue to be carried at the exchange rate at the date of the initial transaction. Non-monetary items measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined.

Exchange differences arising from translation of monetary items are recognised in the statement of comprehensive income, except where deferred in equity as a qualifying cash flow or net investment hedge or are attributable to part of the net investment in a foreign operation.

Exchange differences arising from translation of non-monetary items are recognised directly in equity to the extent that the gain or loss is directly recognised in equity, otherwise the exchange difference is recognised in the statement of comprehensive income.

*Translation of Group Companies functional currency to presentation currency*

The financial results and position of foreign operations whose functional currency is different from the group's presentation currency are translated as follows:

- assets and liabilities are translated at year-end exchange rates prevailing at that reporting date;
- income and expenses are translated at average exchange rates for the period (unless this is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the dates of the transactions); and
- all resulting exchange differences are recognised as a separate component of equity.

On consolidation, exchange differences arising from the translation of any net investment in foreign entities, and of borrowings and other financial instruments designated as hedges of such investments, are taken to foreign currency translation reserve. When a foreign operation is sold the proportionate share of exchange differences would be transferred out of equity and recognised in the statement of comprehensive income.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(l) Cash and Cash Equivalents**

Cash and cash equivalents include cash at bank and on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value, and bank overdrafts. Bank overdrafts are shown within short-term borrowings in current liabilities on the statement of financial position.

For the purpose of the Statement of Cash Flows, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

**(m) Trade and Other Receivables**

Trade receivables, which generally have 30-90 day terms, are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less an allowance for impairment.

Collectability of trade receivables is reviewed on an ongoing basis. Individual debts that are known to be uncollectible are written off when identified. An impairment provision is recognised when there is objective evidence that the Group will not be able to collect the debts. Financial difficulties of the debtor, default payments or debts more than 90 days overdue are considered objective evidence of impairment. The amount of the impairment loss is the receivable carrying amount compared to the present value of estimated future cash flows, discounted at the original effective interest rate.

**(n) Trade and Other Payables**

Trade and other payables are carried at amortised cost and due to their short term nature they are not discounted. They represent liabilities for goods and services provided to the Group prior to the end of the financial year that are unpaid and arise when the Group becomes obliged to make future payments in respect of the purchase of these goods and services. The amounts are unsecured and are usually paid within 30 days of recognition.

**(o) Interest-bearing Loans**

All loans and borrowings are initially recognised at the fair value of the consideration received less directly attributable transaction costs. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Fees paid on the establishment of loan facilities that are yield related are included as part of the carrying amount of the loans and borrowings.

Borrowings are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the balance date.

**(p) Borrowing Costs**

Borrowing costs are recognised as an expense when incurred. The Group does not currently hold qualifying assets but, if it did, the borrowing costs directly associated with this asset would be capitalised (including any other associated costs directly attributable to the borrowing and temporary investment income earned on the borrowing).

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(q) Provisions**

Provisions are recognised when the Group has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

When the Group expects some or all of a provision to be reimbursed, for example under an insurance contract, the reimbursement is recognised as a separate asset but only when the reimbursement is virtually certain. The expense relating to any provision is presented in the statement of comprehensive income net of any reimbursement.

Provisions are measured at the present value of management's best estimate of the expenditure required to settle the present obligation at the balance date using a discounted cash flow methodology. The risks specific to the provision are factored into the cash flows and as such a risk-free government bond rate relative to the expected life of the provision is used as a discount rate. If the effect of the time value of money is material, provisions are discounted using a current pre-tax rate that reflects the time value of money and the risks specific to the liability. The increase in the provision resulting from the passage of time is recognised in finance costs.

**(r) Employee Benefits**

*Wages, salaries, annual leave and sick leave*

Liabilities for wages and salaries, including non-monetary benefits, annual leave and accumulating sick leave expected to be settled within 12 months of the reporting date are recognised in respect of employees' services up to the reporting date. They are measured at the amounts expected to be paid when the liabilities are settled. Expenses for non-accumulating sick leave are recognised when the leave is taken and are measured at the rates paid or payable.

*Employee leave entitlement*

Employee entitlements to annual leave and long service leave are recognised when they accrued to employees. A provision is made for the estimated liability for annual leave and long-service leave as a result of services rendered by employees up to the balance date.

Annual leave is measured at the amounts expected to be paid when the liabilities are settled. The liability for long service leave is recognised and measured as the present value of expected future payments to be made in respect of services provided by employees up to the end of the reporting period using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currencies that match, as closely as possible, the estimated future cash outflows.

Employee entitlement to sick leave and maternity leave or paternity leave is not recognised until the time of leave.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(r) Employee Benefits (cont'd)**

*Pension Obligations*

The Group contributes to the Mandatory Provident Fund Scheme ("MPF Scheme") in Hong Kong which is set up in accordance with the Mandatory Provident Fund Scheme Ordinance. The assets of the MPF Scheme are held in a separately administered fund. The Parent entity's contributions have been utilised by the Group to reduce existing contributions.

**(s) Contributed Equity**

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of new shares or options are shown in equity as a deduction, net of tax, from the proceeds.

**(t) Revenue**

Revenue is recognised and measured at the fair value of the consideration received or receivable to the extent it is probable that the economic benefits will flow to the Group and the revenue can be reliably measured. The following specific recognition criteria must also be met before revenue is recognised:

*Management fees*

Fees charged for managing investments are recognised as revenue as the services are provided.

*Interest revenue*

Revenue is recognised as interest accrues using the effective interest method. This is a method of calculating the amortised cost of a financial asset and allocating the interest income over the relevant period using the effective interest rate, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset to the net carrying amount of the financial asset.

*Rental revenue*

Rental revenue from investment properties is accounted for on a straight-line basis over the lease term. Contingent rental income is recognised as income in the periods in which it is earned. Lease incentives granted are recognised as an integral part of the total rental income.

**(u) Goods and Services Tax (GST)**

Revenues, expenses, assets and liabilities are recognised net of the amount of GST except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO). In these circumstances the GST is recognised as part of the acquisition of the asset or as part of the expense.

Receivables and payables in the statement of financial position are shown inclusive of GST.

The net amount of GST recoverable from, or payable to, the ATO is included as a current asset or liability in the statement of financial position.

**LM INVESTMENT MANAGEMENT LIMITED  
A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 2012**

---

**2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)**

**(u) Goods and Services Tax (GST) (cont'd)**

Cash flows are included in the statement of cash flows on a gross basis and the GST component of cash flows arising from investing and financing activities, which is recoverable from, or payable to, the taxation authority is classified as part of operating cash flows.

**(v) Significant Accounting Judgements, Estimates and Assumptions**

*Significant accounting judgements*

In the process of applying the Group's accounting policies, management has made judgements, apart from those involving estimations, which have had an impact on the amounts recognised in the financial statements. No judgements have been determined to be individually significant.

*Significant accounting estimates and assumptions*

The fair value of investment property has been determined based on Directors' valuation at 30 June 2012. The Directors' fair value calculations are based on current or recent prices of sales of similar properties adjusted to reflect differences with the Company's property.

In the process of applying the Group's accounting policies, management has made estimates and assumptions, apart from those involving judgement, which have had an impact on the amounts recognised in the financial statements. No estimates and assumptions have been determined to be individually significant.

Management continually evaluates its judgements and estimates in relation to assets, liabilities, contingent liabilities, revenue and expenses. Management bases its judgements and estimates on historical experience and on other various factors it believes to be reasonable under the circumstances, the result of which form the basis of the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions.

**(w) Comparative Figures**

When required by Accounting Standards, comparative figures have been adjusted to conform to changes in presentation for the current financial year.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

	Note	Consolidated 2012 \$	2011 \$	Parent 2012 \$	2011 \$
<b>3 REVENUE</b>					
a. Revenue from operating activities:					
Commission income		2,129	12,807	2,129	41
Management fees	21	13,581,734	15,979,226	13,581,734	15,979,226
Rental income		13,344	13,411	13,344	13,412
		<u>13,597,207</u>	<u>16,005,444</u>	<u>13,597,207</u>	<u>15,992,679</u>
b. Other revenue from operating activities:					
Interest		58,138	58,530	58,078	58,530
Gain on foreign exchange		-	4,862	-	-
Other income		117	-	117	-
		<u>58,255</u>	<u>63,392</u>	<u>58,195</u>	<u>58,530</u>
<b>4 EXPENSES</b>					
a. Administration charges - related	21	<u>3,978,004</u>	<u>6,903,455</u>	<u>3,978,004</u>	<u>6,903,455</u>
b. Depreciation - plant and equipment		<u>72,029</u>	<u>56,871</u>	<u>-</u>	<u>-</u>
c. Employee benefits expense:					
Wages and salaries		1,867,771	1,051,474	-	-
Superannuation		9,135	126,489	-	-
Other employee benefits expense		171,528	330,095	-	-
		<u>2,048,434</u>	<u>1,508,058</u>	<u>-</u>	<u>-</u>
d. Finance costs:					
Interest paid to external parties		<u>30,546</u>	<u>24,003</u>	<u>30,414</u>	<u>23,503</u>
e. Other expenses from ordinary activities:					
Auditor's remuneration		41,020	41,361	-	-
Commission		1,101	-	4,289,889	3,239,717
Consultants' fees		38,385	-	-	-
Direct operating expense from rental earnings		-	8,591	-	8,591
Insurance		319,020	324,336	315,692	320,643
Legal costs		75,560	857	-	-
Loss on loan to subsidiary forgiven		-	-	159,729	-
Loss on foreign exchange		1,158	183,171	229,271	-
Rent and outgoings		731,182	642,581	8,744	-
Stamp duty		-	4,625	-	-
Management Fee - LM Administration		4,699,916	5,250,260	4,699,916	5,250,260
Other expenses		749,799	519,148	7,150	1,360
		<u>6,657,141</u>	<u>6,974,930</u>	<u>9,710,391</u>	<u>8,820,571</u>



**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**4 EXPENSES (CONT'D)**

**f. Auditors remuneration**

LM Administration Pty Ltd, a related entity that provides management and administration services paid the auditors remuneration on behalf of the parent entity and reimbursement will not be sought.

**g. Management and administration services**

The value of the management and administration services provided by LM Administration was \$3,978,004 (2011: \$6,903,455).

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
<b>5 INCOME TAX EXPENSE</b>				
<b>a. The components of income tax expense are:</b>				
Current income tax expense	66,619	177,678	45,398	154,913
Deferred income tax	30,049	(103,263)	7,299	(62,817)
Income tax (credits)/expense in the statement of comprehensive income	<u>96,668</u>	<u>74,415</u>	<u>52,697</u>	<u>92,095</u>
<b>b. Reconciliation between aggregate tax expense recognised in the statement of comprehensive income and tax expense calculated per the statutory income tax rate:</b>				
Accounting (loss)/profit before income	649,258	243,970	105,773	274,781
Income tax expense calculated at Parent entity's statutory income tax rate of 30% (2011: 30%)	194,777	73,191	31,732	82,434
Effect of different tax rates of subsidiaries operating in other jurisdictions	(15,778)	(1,883)	-	-
Foreign exchange gains and other translation adjustments	(44,397)	-	20,965	-
Changes in unrecognised temporary differences	(873)	1,541	-	-
Previously unrecognised deferred taxes associated with investment in jointly controlled entity	-	9,661	-	9,661
Previously unrecognised tax losses now recouped to reduce current tax	(27,044)	(6,811)	-	-
Under-provision in prior year	(1,524)	(1,865)	-	-
Non-deductible/non-taxable amounts and capital allowances	(8,493)	581	-	-
	<u>96,668</u>	<u>74,415</u>	<u>52,697</u>	<u>92,095</u>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
<b>6 DIVIDENDS</b>				
Final dividend of \$10,000 per fully paid share, fully franked at a 30% tax rate	350,000	350,000	350,000	350,000
<b>7 CASH AND CASH EQUIVALENTS</b>				
Cash at bank	1,112,667	77,950	1,059,430	11,590
Cash on hand	1,622	807	-	-
Term deposits	-	1,050,000	-	1,050,000
	<u>1,114,289</u>	<u>1,128,757</u>	<u>1,059,430</u>	<u>1,061,590</u>
<b>8 TRADE AND OTHER RECEIVABLES</b>				
<b>CURRENT</b>				
Other receivables	68,924	6,982	4,358	4,953
Interest receivable	-	3,210	-	3,210
	<u>68,924</u>	<u>10,192</u>	<u>4,358</u>	<u>8,163</u>
<i>Related party receivables:</i>				
Loans to related parties	430,579	283,610	430,579	283,610
Loans to subsidiaries	-	-	291,942	851,281
	<u>430,579</u>	<u>283,610</u>	<u>722,521</u>	<u>1,134,891</u>
Total trade and other receivables	<u>499,503</u>	<u>293,802</u>	<u>726,879</u>	<u>1,143,054</u>
<b>9 OTHER ASSETS</b>				
<b>CURRENT</b>				
Deposits	290,819	267,117	-	-
Other prepayments	61,434	52,969	26,736	27,181
	<u>352,253</u>	<u>320,086</u>	<u>26,736</u>	<u>27,181</u>
<b>10 INVESTMENT IN ASSOCIATES</b>				
Investment in jointly controlled entity	<u>4,631,927</u>	<u>4,467,785</u>	<u>4,631,927</u>	<u>4,467,785</u>

Interests in associates are accounted for using the equity method of accounting. Information relating to associates is set out below:

The Company has a 66.67% (2011: 66.67%) interest in the 38 Cavill Avenue Joint Venture, an Australian venture, whose principal activity is commercial rental investment. Although the Parent entity owns a majority share of the venture, this does not constitute a controlling interest in the joint venture due to the nature of the investment and the arrangement between the venturers.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
<b>11 INVESTMENTS IN SUBSIDIARIES</b>				
Investments in controlled entities	-	-	544,717	544,717

These financial assets are carried at cost.

The directors have assessed the carrying values of the company's investments in its subsidiaries as at 30 June 2012 and consider these carrying values are appropriate (refer to note 19). This is based on their assessment of the intrinsic value of each subsidiary.

**12 INVESTMENT PROPERTY**

**At fair value**

Balance at beginning of the year	769,500	1,066,203	769,500	1,066,203
Devaluation of property	-	(296,703)	-	(296,703)
Balance as end of the year	<u>769,500</u>	<u>769,500</u>	<u>769,500</u>	<u>769,500</u>

Investment property comprises a part share in a residential property that is leased to a third party and is carried at fair value, which has been determined based on the amount at which the assets could be exchanged between a knowledgeable willing buyer and a knowledgeable willing seller in an arm's length transaction at the date of valuation.

The Parent entity has a 57% (2011: 57%) part share in an investment property at 20 Albatross Avenue, Mermaid Beach, Gold Coast. The investment property is subject to a first charge to secure the mortgage loan obtained by the Company's partner in the property. The partner is Lisa Maree Darcy, who resigned as one of the Company's director's during the year. The fair value of investment property has been determined based on Directors' valuation at 30 June 2012. The Directors' fair value calculations are based on current or recent prices of sales of similar properties adjusted to reflect differences with the Company's property.

**13 PROPERTY, PLANT AND EQUIPMENT**

Plant and equipment - at cost	401,886	313,971	10,460	10,460
Less: Accumulated depreciation	<u>(201,733)</u>	<u>(120,114)</u>	<u>(10,460)</u>	<u>(10,460)</u>
	<u>200,153</u>	<u>193,857</u>	<u>-</u>	<u>-</u>
Leasehold improvements - at cost	8,179	-	-	-
Less: Accumulated depreciation	<u>(327)</u>	<u>-</u>	<u>-</u>	<u>-</u>
	<u>7,852</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total property, plant and equipment	<u>208,005</u>	<u>193,857</u>	<u>-</u>	<u>-</u>

**a. Reconciliations of carrying amounts at the beginning and end of the period**

<i>Plant &amp; Equipment</i>				
Balance at 1 July 2011	193,857	84,569	-	-
Additions	62,893	203,129	-	-
Disposals	(172)	(9,247)	-	-
Depreciation charge for the year	(71,707)	(56,871)	-	-
Exchange difference	15,282	(27,723)	-	-
Balance at 30 June 2012	<u>200,153</u>	<u>193,857</u>	<u>-</u>	<u>-</u>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**13 PROPERTY, PLANT AND EQUIPMENT (CONT'D)**

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
<i>Leasehold Improvements</i>				
Balance at 1 July 2011	-	-	-	-
Additions	8,033	-	-	-
Disposals	-	-	-	-
Depreciation charge for the year	(321)	-	-	-
Exchange difference	140	-	-	-
Balance at 30 June 2012	<u>7,852</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Totals</b>	<b><u>208,005</u></b>	<b><u>193,857</u></b>	<b><u>-</u></b>	<b><u>-</u></b>

**b. Impairment of property, plant and equipment**

No assets were impaired during the year (2011:nil).

**14 TRADE AND OTHER PAYABLES**

**CURRENT**

Trade payables	39,415	2,725	420	954
Other payables	45,376	32,349	1,663	928
Accrued expenses	33,591	50,667	-	-
GST payable	<u>205,645</u>	<u>56,968</u>	<u>205,645</u>	<u>58,758</u>
	<u>324,027</u>	<u>142,709</u>	<u>207,728</u>	<u>60,640</u>

*Related party payable:*

Trade payables - related	-	-	37	38
Loans from subsidiaries	<u>-</u>	<u>-</u>	<u>18,194</u>	<u>21,779</u>
	<u>-</u>	<u>-</u>	<u>18,231</u>	<u>21,817</u>

<b>Total trade and other payables</b>	<b><u>324,027</u></b>	<b><u>142,709</u></b>	<b><u>226,959</u></b>	<b><u>82,457</u></b>
---------------------------------------	-----------------------	-----------------------	-----------------------	----------------------

**15 INCOME TAX**

**CURRENT**

<i>Liability</i>				
Income tax	<u>55,899</u>	<u>157,227</u>	<u>45,398</u>	<u>154,913</u>

**NON-CURRENT**

Deferred tax assets	<u>129,557</u>	<u>148,503</u>	<u>89,111</u>	<u>89,111</u>
Deferred tax liabilities	<u>903,793</u>	<u>893,699</u>	<u>900,998</u>	<u>893,699</u>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

<b>15 INCOME TAX (CONT'D)</b>	<b>Consolidated</b>		<b>Parent</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>a. Deferred tax assets attributable to:</b>				
Investment in property	89,011	89,011	89,011	89,011
Carry Forward Tax Losses	-	18,946	-	-
Foreign Exchange differences	40,446	40,446	-	-
Others	100	100	100	100
<b>Total deferred tax assets</b>	<b>129,557</b>	<b>148,503</b>	<b>89,111</b>	<b>89,111</b>
<b>b. Deferred tax liabilities attributable to:</b>				
Investments accounted for using the equity method	900,998	892,736	900,998	892,736
Others	2,795	963	-	963
<b>Total deferred tax liabilities</b>	<b>903,793</b>	<b>893,699</b>	<b>900,998</b>	<b>893,699</b>
<b>c. Reconciliation:</b>				
<b>(i) The overall movement in the deferred tax assets:</b>				
Opening balance at 1 July 2011	148,503	42,670	89,111	-
(Charge)/credit to statement of comprehensive income	(18,946)	105,833	-	89,111
<b>Balance at 30 June 2012</b>	<b>129,557</b>	<b>148,503</b>	<b>89,111</b>	<b>89,111</b>
<b>(ii) The overall movement in the deferred tax liabilities:</b>				
Opening balance at 1 July 2011	893,699	867,820	893,699	867,405
(Charge)/credit to statement of comprehensive income:				
Movement in deferred tax for equity accounted investment	7,299	26,591	8,262	26,294
Others	2,795	(712)	(963)	-
<b>Balance at 30 June 2012</b>	<b>903,793</b>	<b>893,699</b>	<b>900,998</b>	<b>893,699</b>
<b>16 PROVISIONS</b>				
<b>CURRENT</b>				
Provision for annual leave	38,796	9,936	-	-
Provision for long service leave	61,623	19,071	-	-
	<b>100,419</b>	<b>29,007</b>	<b>-</b>	<b>-</b>
<b>a. Movements in provision:</b>				
	<b>Annual leave</b>	<b>Long service leave</b>		
Opening balance at 1 July 2011	9,936	8,425	19,071	14,373
Additional provisions recognised	38,796	9,936	42,552	4,698
Amount used during the period	(9,936)	(8,425)	-	-
<b>Balance at 30 June 2012</b>	<b>38,796</b>	<b>9,936</b>	<b>61,623</b>	<b>19,071</b>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

<b>17 CONTRIBUTED EQUITY</b>	<b>Consolidated</b>		<b>Parent</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>35 (2011: 35) fully paid ordinary shares</b>	<b><u>1,032,012</u></b>	<b><u>1,032,012</u></b>	<b><u>1,032,012</u></b>	<b><u>1,032,012</u></b>

Holders of ordinary shares of the Company are entitled to receive dividends as declared from time to time and are entitled to one vote per share at shareholders' meetings.

In the event of winding up of the Company ordinary shareholders rank equally with all other shareholders in relation to a return of capital and participate fully in any proceeds of liquidation.

**a. Movements in ordinary share capital:**

<b>Balance at 1 July 2011</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>
<b>Share split during the year</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Shares issued during the year</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Balance at 30 June 2012</b>	<b><u>35</u></b>	<b><u>35</u></b>	<b><u>35</u></b>	<b><u>35</u></b>

**b. Capital management**

Management's objective is to maintain a strong capital base to ensure the Group continues as a going concern as well as to maintain optimal returns to shareholders and benefits for other stakeholders. Management also aims to maintain an optimal capital structure to reduce the cost of capital.

The Group's capital requirements are regulated under an Australian Financial Services Licence which requires a minimum \$5 million of net tangible assets to be maintained. LM complied with this requirement throughout the year.

There were no changes to the Group's approach to capital management in 2012.

**18 RESERVES**

*Foreign Currency Translation reserve*

The foreign currency translation reserve records exchange differences arising on translation of foreign controlled subsidiaries.

**19 CONTROLLED ENTITIES**

<b>Controlled Entities Consolidated</b>	<b>Country of Incorporation</b>	<b>Percentage Owned (%)</b>	
		<b>2012</b>	<b>2011</b>
<i>Parent Entity:</i>			
<b>LM Investment Management Limited</b>	<b>Australia</b>	<b>-</b>	<b>-</b>
<i>Subsidiaries of LM Investment Management Limited:</i>			
<b>LM Investment Management International Ltd</b>	<b>Hong Kong</b>	<b>100</b>	<b>100</b>
<b>LM Investment Management New Zealand Limited</b>	<b>New Zealand</b>	<b>100</b>	<b>100</b>
<b>LM Investment Management UK</b>	<b>United Kingdom</b>	<b>100</b>	<b>100</b>
<b>LM FZE</b>	<b>Dubai</b>	<b>100</b>	<b>100</b>

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**20 STATEMENT OF CASH FLOW RECONCILIATION**

**a. Reconciliation of cash and cash equivalents**

For the purposes of the statement of cash flow, cash and cash equivalents includes cash on hand and at bank, net of outstanding bank overdrafts. Cash at the end of the financial year, as shown in the statement of cash flow is reconciled to the related items in the statement of financial position as follows:

	<b>Consolidated</b>		<b>Parent</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Cash and cash equivalents (Note 7)	<u>1,114,289</u>	<u>1,128,757</u>	<u>1,059,430</u>	<u>1,061,590</u>
<b>b. Reconciliation of net profit after tax to net off cash flows from operations:</b>				
Profit after income tax	552,590	169,555	53,076	182,686
<i>Add/(less) non-cash items:</i>				
Share of associates net loss/ (profit)	(169,180)	(267,805)	(169,180)	(267,805)
Share of associates drawings	-	206,571	-	206,571
Changes in fair value of investment in investment property	-	296,703	-	296,703
Depreciation	72,029	56,871	-	-
Assets written off	-	-	-	-
Net loss on foreign exchange	1,158	178,313	229,271	-
Loss on loan to subsidiary forgiven	-	-	159,729	-
<i>Changes in assets and liabilities:</i>				
(Increase)/decrease in trade and other receivables	(64,317)	14,387	251	2,651
(Increase)/decrease in other assets	(32,168)	(153,130)	445	609
Increase/(decrease) in trade and other payables	181,317	(46,692)	147,088	(25,906)
Increase/(decrease) in provisions	71,412	6,209	-	-
Increase/(decrease) in tax liabilities	(95,747)	185,568	(105,962)	(188,831)
Increase/(decrease) in deferred taxes	29,040	(79,955)	7,299	(62,817)
Net cash provided by/(used in) operating activities	<u>546,134</u>	<u>566,595</u>	<u>322,017</u>	<u>143,861</u>

**c. Non-cash activities**

*Dividends Paid*

During the financial year the Company paid dividends of \$350,000 (2011: \$350,000) which were credited to the loan accounts of LM Administration Pty Ltd in satisfaction of payment.

**21 RELATED PARTIES**

*Subsidiaries*

Investments in subsidiaries are set out in note 11.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**21 RELATED PARTIES (CONT'D)**

*Key management personnel*

The aggregate compensation made to directors and other members of key management personnel of the Group is set out below. LM Administration Pty Ltd, a related entity that provides management and administration services paid these expenses on behalf of the Group and reimbursement will not be sought.

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
Aggregate compensation	3,452,520	2,325,615	3,036,250	2,008,454

*Transactions with related parties*

The following transactions occurred with related parties:

a. Revenue received for services

Management fee income from LM First Mortgage income Fund	13,581,734	15,979,226	13,581,734	15,979,226
--	------------	------------	------------	------------

b. Payments for goods and services:

Administration charges paid to LM Administration Pty Ltd	3,978,004	6,903,455	3,978,004	6,903,455
Management fees paid to LM Administration Pty Ltd	4,699,916	5,250,260	4,699,916	5,250,260
Dividends paid to LM Administration Pty Ltd	350,000	350,000	350,000	350,000
Commissions paid to subsidiaries	-	-	4,288,788	3,239,717
Loan forgiven to subsidiaries	-	-	159,729	-

During the financial year LM Investment Management Ltd forgave an intercompany loan to its UK subsidiary (LM Investment Management UK Ltd) which resulted in a loss on loan forgiveness of \$159,729.

*Receivable from and payable to related parties*

The following balances are outstanding at the reporting date in relation to transactions with related parties:

a. Assets:

Loan receivable from LM Administration Pty Ltd	430,579	283,610	430,579	283,610
Loans receivable from subsidiaries	-	-	291,942	851,281
Investment in associate	4,631,927	4,467,785	4,631,927	4,467,785
Investment property	769,500	769,500	769,500	769,500

Transactions between the Company and its subsidiaries consist of loans which are interest-free, unsecured and will be repayable on demand.



**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2012**

**22 FINANCIAL RISK MANAGEMENT OBJECTIVES AND POLICIES**

**Market risk**

**Foreign currency risk**

The carrying amount of the group's foreign currency denominated financial assets and financial liabilities at the reporting date was as follows:

	Assets		Liabilities	
	2012	2011	2012	2011
<b>Consolidated</b>				
Hong Kong dollars	205,441	524,887	145,677	125,287
New Zealand dollars	-	-	15,625	14,060
Great British pounds	16,589	1,255	49,156	32,194
United Arab Emirates Dirham	12,263	14,568	37,142	45,202

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in the market interest rates.

As at the reporting date, the Group had no liabilities exposed to variable interest rate risk as all borrowings are non-interest bearing.

**Liquidity risk**

Liquidity risk is the risk that the Group and Company may not be able to meet its obligations to investment activities or other obligations.

The Group's objective is to maintain a balance between continuity of funding and flexibility through the use of available funding through an adequate amount of committed credit facilities.

The Group manages liquidity risk by monitoring forecast cash flows and to have sufficient liquidity to meet its liabilities when due.

**23 COMMITMENTS**

**a. Operating lease commitments**

At 30 June 2012, the Group had outstanding commitments payable for future minimum lease payments under non-cancellable operating lease in respect of office premises and staff quarters, which fall due as follows:

	Consolidated		Parent	
	2012	2011	2012	2011
	\$	\$	\$	\$
Within one year	466,717	605,663	-	-
One to five years	-	543,650	-	-
	<u>466,717</u>	<u>1,149,313</u>	<u>-</u>	<u>-</u>

**24 CONTINGENT LIABILITIES**

There are no material contingent liabilities as at 30 June 2012.

**25 EVENTS AFTER THE BALANCE SHEET DATE**

Since 30 June 2012 there has not been any matter or circumstance not otherwise dealt with in the financial report that has significantly affected or may significantly affect the Group.

**LM INVESTMENT MANAGEMENT LIMITED**  
**A.B.N 68 077 208 461**

**DIRECTORS' DECLARATION**

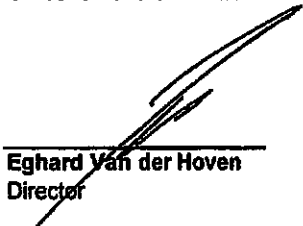
---

In the directors' opinion:

- a. the attached financial statements and notes thereto comply with the Corporations Act 2001, the Australian Accounting Standards - Reduced Disclosure Requirements, the Corporations Regulations 2001 and other mandatory professional reporting requirements;
- b. the attached financial statements and notes thereto give a true and fair view of the Group's financial position as at 30 June 2012 and of its performance for the financial year ended on that date; and
- c. there are reasonable grounds to believe that the Group will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors pursuant to section 295(5) of the Corporations Act 2001.

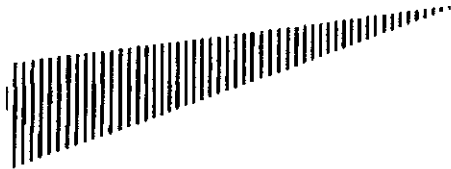
On behalf of the directors



---

**Eghard Van der Hoven**  
Director

4 October 2012  
Gold Coast



**ERNST & YOUNG**

111 Eagle Street  
Brisbane QLD 4000 Australia  
GPO Box 7878 Brisbane QLD 4001  
Tel: +61 7 3011 3333  
Fax: +61 7 3011 3100  
www.ey.com/au

## **Independent auditor's report to the members of LM Investment Management Limited**

### **Report on the financial report**

We have audited the accompanying financial report of LM Investment Management Limited, which comprises the consolidated statement of financial position as at 30 June 2012, the consolidated statement of comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information, and the directors' declaration of the consolidated entity comprising the company and the entities it controlled at the year's end or from time to time during the financial year.

### ***Directors' responsibility for the financial report***

The directors of the company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards - Reduced Disclosure Requirements and the *Corporations Act 2001* and for such internal controls as the directors determine are necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

### ***Auditor's responsibility***

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. Those standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Independence***

In conducting our audit we have complied with the independence requirements of the *Corporations Act 2001*. We have given to the directors of the company a written Auditor's Independence Declaration, a copy of which is included in the directors' report.



### **Opinion**

In our opinion the financial report of LM Investment Management Limited is in accordance with the *Corporations Act 2001*, including:

- (a) giving a true and fair view of the financial position of the consolidated entity at 30 June 2012 and of its performance for the year ended on that date; and
- (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and the *Corporations Regulations 2001*.

*Ernst & Young*

Ernst & Young

*P McLuskie*

Paula McLuskie  
Partner  
Brisbane  
4 October 2012

NO DUTY PAYABLE

*14-10-99*  
Commissioner of Stamp Duties,  
Queensland

JOINT VENTURE AGREEMENT

*File  
38 cm*

THIS AGREEMENT is made the 7th day of April 1999

BETWEEN : BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust, MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust, CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust, LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 of the First part

AND : BARONSAND PTY LTD ACN 086 817 352 a Company duly incorporated in the State of Queensland c/- PKF Worldwide, Level 5 RSL Centre, 9 Beach Road, Surfers Paradise in the said State (hereinafter called "the Trustee") of the Second Part

WHEREAS:-

- A. BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust, MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust, CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust, LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 have agreed to embark upon a Joint Venture on the basis herein set out.
- B. The parties hereto have agreed upon the terms functions duties rights and obligations hereinafter appearing for the acquisition development, leasing and disposal of the land described on the First Schedule hereto (hereinafter collectively referred to as "the said land") which it is proposed be purchased by the Trustee.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. SCOPE OF VENTURE

- 1.01 BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust, MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust, CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust, LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 (hereinafter together called the "Joint Venturers") agree to enter into a Joint Venture to acquire develop and deal with the said land for the purposes hereinafter set out.
- 1.02 Subject to any decision of the Management Committee to the contrary the Joint Venturers shall develop the said land by subdividing the building erected thereon into lots pursuant to the provisions of the *Land Titles Act 1994* and refurbishing same (herein called "the Development"), lease those vacant areas contained in the said Building and manage same as a first class commercial retail and office building.
- 1.03 Subject to the terms hereof, the Joint Venture will continue from the date hereof until termination which shall occur upon the eventual sale of the said land and improvements in accordance with the decisions of the Management Committee or at such earlier date as the Joint Venturers agree to terminate the Joint Venture.
- 1.04 The said land shall be the property of the Joint Venture and each of the Joint Venturers shall only deal with its interest in the said land in accordance with the terms hereof.
- 1.05 The Planning and direction and overall management of the Venture and the implementation control and supervision thereof shall be vested in a Management Committee. The Management Committee shall make all decisions on policy procedures and objectives in regard to all aspects of the venture including the subdivision, refurbishment of the Building, the leasing of the Building and the

terms, timings, prices for and at which the said land or improvements or any part thereof is to be offered for sale.

## 2.MANAGEMENT COMMITTEE

- 2.01 The Management Committee shall consist of members who shall comprise:-
- (a) The appointee for the time being and from time to time of BANDSIDE PTY LTD ACN 086 913 135, MJ SECURITIES PTY LTD ACN 070 668 174, CAFFE EVITA PTY LTD ACN 077 844 225 which shall in the first instance be SCOTT JAMES MC MURTRIE; and
  - (b) The appointee for the time being and from time to time of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 which shall in the first instance be MICHAEL PATRICK DWYER.
- 2.02 The parties referred to in each of Clause 2.01 (a) and 2.01(b) have the right to remove or replace their appointee. Any such appointment removal or replacement shall be notified in writing in advance to the other members of the Management Committee.
- 2.03 A quorum for a meeting shall be the two (2) members and no decision of the Management Committee shall be binding unless decided on by a quorum constituted by Joint Venturers holding in aggregate one hundred per cent (100%) of the votes described in the Second Schedule hereto.
- 2.04 All meetings of the Management Committee shall be presided over by a chairman who shall be nominated at each meeting. The chairman shall not have a casting vote.
- 2.05 All questions for decision by the Management Committee shall be decided upon by a vote and shall require one hundred per cent (100%) vote of the Joint Venturers as described in the Second Schedule hereto.

- 2.06 Any member of the Committee may by notice in writing to the other members summons a meeting of the Committee. Any such notice shall be given seven (7) clear days at least prior to the meeting specifying the place, the day and the hour of the meeting and in the case of special business the general nature of the business.
- 2.07 A meeting shall, notwithstanding that it is called by notice shorter than is required, be deemed to be duly called if all members are present at such meeting and if all members present agree to waive notice.
- 2.08 If within half an hour of the time appointed for any meeting of the Management Committee convened in accordance with the provisions of this Deed a quorum is not present any one of the members present shall notify such other members by return paid registered letter that the meeting shall stand adjourned to a date time and place to be fixed by the members present but not later than ten (10) days from the date of the notice notifying the members not present of the adjourned meeting. Should the members present fail to fix a date time and place for the adjourned meeting then the meeting shall be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting the members present shall be deemed to constitute a quorum with full power to decide any question or issues as if they were a full and duly appointed and constituted Management Committee within the terms of this Agreement.
- 2.09 The Management Committee shall cause minutes to be made:-
- (a) Of all appointments of Members;
  - (b) Of the names of members present at all meetings of the Management Committee;
  - (c) Of all proceedings at all meetings of the Management Committee;



Such minutes shall be signed by the Chairman of the Meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

### 3. MANAGER

3.01 Subject to the terms hereof, a Manager or Managers shall be appointed by the Joint Venturers by way of an independent management agreement to carry out the duties and functions set out in this clause and is/are appointed for the term(s) specified in such agreement(s). The first manager(s) shall be the person(s) or corporation(s) whose particulars appear in the Third Schedule hereto.

3.02 The Manager, subject to the management agreement under which the Manager is appointed, under the supervision of the Management Committee will undertake and manage the day to day running of the business of the Joint Venture including (but without limiting the generality of the foregoing) the Management of:

- (a) Obtainment of approvals and permits for the Subdivision of the Building;
- (b) Selecting and conferring with surveyors, engineers and architects and other consultants and contractors in relation to the Development;
- (c) Leasing of the Buildings on the Development;
- (d) Advertising and marketing for tenants of the said land and improvements on the most profitable basis;
- (e) obtaining necessary approvals from Local Councils and/or other Statutory Bodies;
- (f) Calling tenders in respect of the sale and/or construction of Buildings where necessary.

3.03 The Manager shall devote to its duties all the skill and experience and expertise which it possesses and the skill and expertise of its Directors and staff in the work required to be done to discharge its duties and the Manager will consult with the

Management Committee with respect to all major decisions including selection of the persons or companies by whom any works or services are to be done and with respect to all matters of finance. The Manager shall, without delay, give effect to any directions the Manager receives from the Management Committee.

3.04 As remuneration for its services, the Manager shall receive the sum detailed in the Fourth Schedule hereto.

3..05 It is hereby declared that the Manager has been appointed hereunder as a result of the particular services and advantages which they can offer to the Joint Venturers in the performance of their duties hereunder and accordingly the Manager shall not be entitled to sell transfer or assign its rights duties and liabilities hereunder except with the written consent of the Management Committee.

3.06 The Manager shall be responsible for keeping all proper and usual accounting records and books of account for the Joint Venture.

3.07 the Manager will supply monthly accounting reports to the Management Committee, if the Committee so requests.

3.08 The Manager shall be entitled to recover from the Joint Venturers as a debt due and owing to it the amount of any separate charge reasonably incurred by it for consulting with or employing any external accounting service in connection with the preparation of the said accounts but shall not be entitled to make a separate charge to the Joint Venturers for any work done in performance of its duties under this clause by it or any of its internal staff.

#### 4. TERMINATION OF MANAGER'S APPOINTMENT

4.01 If at any time in the opinion of the Management Committee the Manager is failing to carry out their functions and duties hereunder diligently effectively properly and

satisfactorily, the Committee on behalf of the Joint Venturers, may give the Manager written notice thereof specifying the matters or aspects about which it has complaints or is dissatisfied.

4.02 Within seven (7) days after the giving of such notice, the Manager shall furnish to the Management Committee either in writing or otherwise explanations arguments and other submissions in relation to its performance and activities and shall make such changes or improvements in the carrying out of its functions and duties hereunder as it considers appropriate and the Management Committee shall give proper consideration thereto.

4.03 If after the said period of seven (7) days the Management Committee resolves that the Manager has failed to improve or to justify its performance hereunder and is still not carrying out its functions and duties hereunder diligently, effectively, properly and satisfactorily, the Management Committee may give the Manager notice that the Manager's services and duties hereunder are terminated forthwith. Upon receipt of such notice, the Manager shall ipso facto wholly and absolutely cease to be entitled or obliged in any way or to any extent to perform or carry out any of the Manager's duties functions responsibilities or obligations as specified in clause 3 hereof.

## 5. APPOINTMENT OF TRUSTEE

5.01 The Joint Venturers acknowledges the Trustee is trustee for the Joint Venturers and hold pursuant to the terms hereof the said land and any other assets of the Joint Venture from time to time upon trust for the Joint Venturers in the shares herein set out.

5.02 The Joint Venturers shall take all such steps which may be necessary to procure the registration of the Trustee as registered proprietor of an estate in fee simple in the said land. The Joint Venturers shall reimburse the Trustee for all costs and out-of-

pocket expenses incurred by the Trustee in the due and proper performance of its duties, functions and obligations hereunder. The Trustee shall not otherwise be entitled to receive any remuneration whatsoever for the performance of its duties and functions and obligations hereunder as Trustee for the Joint Venturers. The Trustee has no beneficial interest in the Joint Venture whatsoever.

- 5.03 The Trustee will apply to a financial institution or other suitable corporation or individual to provide or arrange the necessary finance to acquire the land, subdivide the land, refurbish the Building, to make interim distributions of profits in accordance with the terms hereof, and to pay legal fees, stamp duty, rates, land tax, holding charges, developments costs and other outgoings.
- 5.04 The Trustee will act and deal with the said Trust assets in accordance with instructions from time to time given to it by or on behalf of the Management Committee, and, without limiting the generality of the foregoing, will sign all such applications for building or other approvals, easements, leases, transfers, loan agreements, bills of mortgage and powers of Attorney and will deal with leases as instructed by or on behalf of the Management Committee.
- 5.05 The Trustee shall have no power to make any decision in respect of Joint Venture assets, liabilities, activities or passive operations, and shall not in any way deal with the said land or any other assets or any other part thereof except in accordance with specific instructions given by or on behalf of the management committee.
- 5.06 The management committee will instruct the Trustee to cause proper books of account to be kept in respect of its employment and shall cause yearly Balance Sheet and Profit and Loss Account to be prepared by accountants appointed by the Management Committee not less than once in each twelve (12) calendar months and shall upon request produce the same to the Joint Venturers for inspection.

- 5.07 All funds received or expended by the Trustee in carrying out his functions hereunder shall be paid into or expended from an account with a trading (within the meaning of the Banking Act (Commonwealth)) bank at a branch decided upon by the Management Committee and no cheque or other drawing on such account shall be made without the signature of a duly authorised person or persons agreed to by the Management Committee.
- 5.08 The Trustee will from time to time as directed by the Management Committee appoint such attorney or attorneys having such powers and authorities as the Management Committee shall from time to time in writing direct.
- 5.09 The Trustees shall continue to act until the termination of the Joint Venture in accordance with the provisions of clause 9 hereof or until the appointment of a Receiver in accordance with clause 10 hereof and upon the appointment of a Receiver the Trustee will, upon receiving a written request from the Receiver, sign any documents and do any acts required by the Receiver.
- 5.10 The Trustee will from time to time as directed by the Management Committee appoint solicitors and other professional advisors to represent and advise on behalf of the Joint Venturers.

## 6. PROFITS AND LOSS/FINANCE CONTRIBUTIONS

- 6.01 The Joint Venturers will share in the profits and be responsible for losses of the Joint Venture in the proportions disclosed in the Fifth Schedule hereto.
- 6.02 Profits or losses shall be determined and calculated in accordance with ordinary accounting principles.
- 6.03 The Joint Venturers shall provide such further financial accommodation to the Joint Venture (whether by way of further contribution to capital or by way of loans) as may be determined by the Management Committee from time to time.

- 6.04 A Joint Venturer shall be required to provide to the Trustee (or at the Trustee's direction) such financial accommodation referred to in clause 6.03 from time to time within seven (7) days (herein called "the Due Date") of notice of a determination by the Management Committee together with an amount equivalent to twelve (12) percent per annum, (calculated at daily balance) of the amount of the aforesaid financial accommodation due and payable in respect of each day after the Due Date in respect of which payment remains outstanding and which amount shall belong absolutely to the Joint Venturers and shall be a debt due and owing to the Joint Venturers.
- 6.05 Unless otherwise determined by the Management Committee a Joint Venturer who provides further financial accommodation by way of loans to the Joint Venture pursuant to clause 6.01 hereof shall be entitled to interest at a commercial rate calculated at daily balances and payable at monthly rests upon such financial accommodation so provided from time to time.

## 7. APPLICATION OF MONEYS

- 7.01 Before the sale of all the said land any moneys received by the Trustee on behalf of the Joint Venturers (including but not limited to rental income) shall be applied:-
- (a) Firstly, in payment of the Manger's fee and of any expenses which may have been incurred for and incidental to the setting up and carrying out of the Joint Venture (including moneys borrowed for the purpose of the Joint Venture and interest thereon);
  - (b) Secondly, the balance then remaining in the aforesaid proportions to the Joint Venturers by way of distribution of profits.

## 8. DRAWINGS OF PROFITS

- 8.01 Either of the Joint Venturers may during the continuance of this Joint Venture draw such sums on account of or in anticipation of its share of the profits as may be determined by the Management Committee. If on any accounting it appears that either Joint Venturer has drawn any sum in excess of its share of profits it shall forthwith repay the same to the funds of the Joint Venture.

## 9. DISSOLUTION AFTER COMPLETION

- 9.01 After the said land has been sold and the selling price has been received the Management Committee shall carry out the following duties specified in the ensuing sub-clauses of this clause.
- 9.02 The Management Committee shall cause a full and complete accounting to be carried out.
- 9.03 If there are insufficient moneys to satisfy the Manager's fees and all debts and liabilities of the Joint Venture, the Management Committee shall determine the correct contributions to be made by the Joint Venturers (in accordance with the terms of sub-clause 6.03 hereof) and will demand immediate payment of these contributions.
- 9.04 Should any Joint Venturer fail to contribute its proportion of the loss in accordance with the provisions hereof then the remaining Joint Venturer may without prejudice to its respective rights against the defaulting Joint Venturer satisfy the deficiency resulting from the failure of the Joint Venture to make such contribution as aforesaid.

9.05 Then the Management Committee shall distribute the property of the Joint Venture in the following manner:-

- (a) Firstly, in payment of any outstanding Manager's fees or debts and liabilities of the Joint Venture;
- (b) Secondly, the residue shall be the net profit of the Joint Venture and shall be apportioned ratably between the Joint Venturers in the proportions set out in the Fifth Schedule hereof after taking into account moneys drawn in anticipation of profits.

9.06 Finally, the Management Committee shall dissolve the Joint Venture.

#### 10. DEFAULT

10.01 In any of the following events of default (herein called "an event of default"), that is to say if:-

- (a) Any Joint Venturer breaches any of the provisions hereof (including but without limitation the provision of any financial accommodation pursuant to clause 6.04 hereof); or
- (b) A resolution is passed or a petition is issued for the winding up of the Trustee or any Joint Venturer; or
- (c) A resolution is passed pursuant to the provisions of *The Corporations Law* to the effect that the Trustee or any Joint Venturer shall for a specified period be under the sole management of a person or persons to be called the official Manager; or
- (d) A receiver or receiver and manager or administrator is appointed to the assets of or affairs of the Trustee or any Joint Venturer; or



- (e) A Joint Venturer (in the case of a person) commits an act of bankruptcy (within the meaning of the Bankruptcy Act {Commonwealth}) or becomes bankrupt; or
- (f) The Management Committee decides that any Joint Venturer could not or would not perform its obligations under this Agreement.

THEN any Joint Venturer shall have ninety (90) days upon the receipt of a notice in writing from any other Joint Venturer (not being in default) requesting him to remedy the same, to remedy the aforesaid default FAILING WHICH all of the Participating Interest and the Participating Shares of the Joint Venturer so in default (herein called "the Defaulting Venturer") under this Joint Venture Agreement shall be forthwith purchased by and transferred to the Joint Venturers (other than the Defaulting Venturer) in the proportion that their Participating Shares bear to each other in accordance with the following provisions:-

- (i) the purchase price shall be the value agreed upon by all of the Joint Venturers in respect of the Participating Interest and the Participating Shares AND in default of agreement the value determined by a registered Valuer appointed by the Management Committee who shall act as an expert and not as an arbitrator and whose decision shall be final and which value is hereafter called ("the Sale Price");
- (ii) the Sale Price shall be payable in full by bank cheque to the Defaulting Venturer (or as he shall direct) within sixty (60) days after determination of the Sale Price;
- (iii) in exchange for the Sale Price the Defaulting Venturer shall execute promptly such instruments of transfer and take such other action and steps as

may be necessary or appropriate to transfer its Participating Interest and Participating Shares to the other Joint Venturers;

- (iv) for the purposes of further and better securing the obligations of the Defaulting Joint Venturer under clause (iii) hereof the Defaulting Joint Venturer hereby for valuable consideration irrevocably appoints jointly and severally each of the other Joint Venturers its attorney and in its name and on its behalf to carry out, to exercise, to sign, to seal and to deliver and to do all assurances, deeds, instruments, acts and things whatsoever which in the opinion of the other Joint Venturers are necessary or expedient to carry out, execute, sign, seal, deliver or do for the purposes of giving effect to the provisions in clause (iii) hereof.

10.02 Upon the sale and purchase of the Defaulting Venturer's Participating Interest and Participating Shares pursuant to the provisions of clause 10.01 hereof the following provisions shall apply:-

- (a) the Defaulting Venturer shall have no further entitlement to share in profits of the Joint Venture following the date of settlement but shall share in all profit, distributions accrued up to the date of settlement;
- (b) the Defaulting Venturer shall remain liable for all liabilities, debts and obligations accrued up to and including the date of forfeiture as aforesaid.

## 11. WITHDRAWAL/RIGHTS OF PRE-EMPTION

11.01 If any Joint Venturer wishes to withdraw from the Joint Venture (hereinafter called "the Withdrawing Party") he shall give written notice of his intention to each of the other parties which notice (hereinafter called "the Purchasing Option") shall grant and constitute an option to purchase the whole but not part of the Withdrawing

Party's Participating Interest and Participating Shares at a stated share value (hereinafter called "the Sale Price"). A Participating Interest and Participating Share shall not be sold or transferred unless and until the rights of pre-emption herein conferred shall have been exhausted.

11.02 (a) Any party wishing to exercise this option shall give notice in writing of his intention to do so to each of the other parties within sixty (60) days of the date of the Purchasing Option;

(c) Any party failing to give notice in accordance with clause 11.02(a) hereof shall be deemed to have not exercised the Purchasing Option.

11.02 If more than one Joint Venturer gives a valid notice exercising a Purchasing Option, they shall each purchase the Withdrawing Party's Participating Interest and Participating Shares in the proportion that their Participating Shares bear to each other or such other proportion as they may agree between themselves.

11.04 The Sale Price shall be determined in accordance with the following formula:-

$$\frac{B \times C}{A}$$

where:

A = the Participating Interest of the Withdrawing Party as disclosed in the Fifth Schedule.

B = the value of the assets of the Joint Venture as determined by a registered Valuer appointed by the Management Committee who shall act as an expert and not as an arbitrator and whose decision shall be final.

C = the aggregate of the Participating Interest of all Joint Venturers as disclosed in the Fifth Schedule.

- 11.05 In the event of the valid exercise of the Purchasing Option the party selling its Participating Interest and its Participating Shares (hereinafter called "the Vendor") shall receive from the party acquiring such interest and shares (hereinafter called "the Acquiring Party") the Sale Price or the Balance Sale Price (as the case may be) by a bank cheque within sixty (60) days of the date of notice of exercise of the option.
- 11.06 In exchange for such Sale Price the Vendor shall transfer to the Acquiring Party all of its right, title and interest in and to its Participating Interest and Participating Shares. The Vendor shall execute promptly such instrument of transfer and take such other action and steps as may be necessary or appropriate, or as required by the Acquiring Party, to evidence the Acquiring Party's ownership in the ratio aforesaid of the rights of the Vendor so transferred, and such Acquiring Party may enforce specific performance thereof in any court of competent jurisdiction.
- 11.07 In the event of the valid exercise of the Purchasing Option the Vendor hereby grants to the Acquiring Party a power of attorney exercisable after the valid exercise of the option on the following terms:-
- (a) The Vendor irrevocably appoints the Acquiring Party to be its attorney and in its name and on its behalf to carry out, to exercise, to sign, to seal and to deliver and to do all assurances, deeds, instruments, acts and things whatsoever which in the opinion of the Acquiring Party are necessary or expedient for the Vendor to carry out, execute, sign, seal, deliver or do for

the purpose of enabling the Acquiring Party to carry on the objects of this agreement and to give effect to the intent of clause 11.06; and

- (b) Any act or thing done by the Acquiring Party on behalf of the Vendor in pursuance of the powers conferred by paragraph (a) of this clause shall bind the Vendor absolutely. The Vendor shall, at all times, indemnify and hold harmless the Acquiring Party, its directors, officers, employees and representatives from and against any and all claims, damages and liability arising out of any act or thing done, any obligation or responsibility assumed, by the Acquiring Party on behalf of the Vendor.

- 11.08 In the event of the whole of the share or interest of the Withdrawing Party not being sold under the preceding provisions of this clause the Withdrawing Party shall be at liberty to sell and transfer its share or interest in the Joint Venture to any person approved by the Management Committee at the same price referred to in the Purchasing Option but for no lesser sum without first resubmitting the share or interest to the remaining Joint Venturers in accordance with Clause 11.01 and 11.02 herein.

## 12. DISPUTE RESOLUTION

- 12.01 Any dispute or difference whatsoever arising out of or in connection with this Agreement ("Dispute") shall be resolved as follows :

### Reference to ADR

The parties shall first refer the Dispute to mediation by a Law Society Approved Mediator agreed by the parties, or failing agreement, appointed by the President of the Society, on the terms of the standard mediation agreement approved by the Queensland Law Society.

The reference shall commence when any party gives written notice to the other(s) specifying the Dispute and requiring its resolution under this clause.

Any information or documents obtained through or as part of the reference under this sub-clause shall not be used for any purpose other than the settlement of the Dispute under this sub-clause.

#### Final Resolution

If the Dispute is not resolved within twenty-one (21) days of the commencement of the reference under the preceding sub-clause either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.

#### Venue

Any mediation under this clause shall be held at the offices of the Queensland Law Society unless the parties otherwise agree.

#### Contract Performance

Each party shall continue to perform this Agreement notwithstanding the existence of a Dispute or any proceedings under this clause.

### 13. SEVERANCE

This Agreement shall be deemed severable if any portion hereof shall be invalid, uncertain or unenforceable for any reason whatsoever such portion shall be deemed severed and ignored and the remainder shall not thereby be invalidated but shall remain in full force and effect.

### 14. INDEMNITIES

14.01 The Joint Venturers hereby mutually covenant and agree to contribute to any loss of

the Joint Venture in the proportions set forth in the Fifth Schedule hereto and each of them hereby indemnifies and agrees to keep indemnified the others in respect of any part of any such deficiency over and above such other's said proportion thereof which such other is called upon to pay or contribute. The Joint Venturers hereby indemnify and agree to keep indemnified the Trustee in respect of any deficiency in funds required for the purpose of this Joint Venture and against any financial loss in respect of any claim upon the Trustee arising out of the Joint Venture including a claim for moneys owing pursuant to any securities executed by the Trustee in favour of any financier to the Joint Venture PROVIDED THAT the limit of each Joint Venturer's liability (expressed as a percentage of the total liability of the Trustee hereunder) shall be that as set out in the Fifth Schedule hereto.

14.02 In this clause the party or parties having the benefit of the aforesaid Guarantees is each or are all jointly and severally called "the Creditor", it is hereby agreed and declared that each of the aforesaid Guarantees is given to the Creditor on the following conditions:-

- (a) The Creditor shall have the fullest liberty without affecting the Guarantee to postpone at any time and from time to time the exercise of all or any of the powers rights authorities and discretions conferred upon it or them by this Deed or by any other document in writing relating thereto or otherwise and to exercise the same at any time and in any manner and either to enforce or forbear to enforce any covenants or obligations for or relating to payment of the guaranteed moneys or any other covenants contained or implied in this Deed or in the said documents in writing or in the said Guarantee of the Joint Venturers or any other remedies available to the Creditor and the respective Guarantor shall not be released by any exercise by the Creditor of

such liberty with reference to the matters aforesaid or any of them or by any time being given to the Joint Venturers with reference to the payment by the Joint Venturers at any time of all or any part of the moneys payable by the Joint Venturers hereunder or by any other thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor.

- (b) The Guarantee shall be a continuing Guarantee and shall not be considered as wholly or partially discharged by the payment at any time hereafter of any part of the moneys payable by the Joint Venturers hereunder or by any settlement of account intervening payment or by any other matter or thing whatsoever.
- (c) The Guarantee shall not be affected by the loss of any security now or hereafter held or taken by the Creditor from the Joint Venturers or from any Guarantor or by the Creditor failing or neglecting to recover by the realisation of any such security or otherwise any of the moneys at any time owing by the Joint Venturers to the Creditor hereunder or by any laches or mistakes on the part of the Creditor.
- (d) Until the Creditor shall have received payment in full of all moneys owing by the Joint Venturers hereunder the Guarantor shall not be entitled on any ground whatsoever to claim the benefit of any security for the time being held by the Creditor or either directly or indirectly to claim the benefit of any dividend or payment out of the estate of any company or person liable to the Creditor for the guaranteed moneys and in the event of any Joint Venturer (being a corporation) entering into a scheme of arrangement or going into liquidation or any Joint Venturer (being an individual) entering



into a composition with creditors or committing an act of bankruptcy under the Bankruptcy Act (Commonwealth) the Guarantor shall not be entitled to prove or claim in the estate or assets of the Joint Venturers in competition with the Creditor so as to diminish any dividend or payment which but for such proof the Creditor would be entitled to receive out of such estate or assets and the receipt of any dividend or other payment by the Creditor from such estate or assets shall not prejudice the party or parties having the benefit of this Guarantee's right to recover from the Guarantor the guaranteed moneys.

- (e) The Creditor may compound with or release any other Guarantor or may release any security held from any other Guarantor without affecting the liability of the respective Guarantor under his or its Guarantee.
- (f) The Guarantee shall enure for the benefit of the Creditor and its or their successors transferees and assigns and shall bind the successors and assigns of the Guarantor.
- (g) This Guarantee is to secure the whole of the indebtedness from time to time of the Joint Venturers to the Creditor provided that if the Guarantor's liability to the Creditor is limited the Guarantor's liability to the Creditor shall not by the virtue of this clause exceed the amount of such limit.
- (h) The Creditor may from time to time amend or vary the terms of the agreement set out in this Deed without the consent of the Guarantor.
- (i) This Guarantee being given for valuable consideration (and being coupled with an interest) is irrevocable and shall not be revoked by the winding up or death of the Guarantor.

- (j) In order to give effect to the Guarantee the Creditor shall be at liberty to act as though the Guarantor were a principal debtor and the Guarantor waives all and any of its or his rights as surety (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any of the provisions hereof.
- (k) That notwithstanding the whole or part of the guaranteed moneys may be irrecoverable from any Joint Venturer by the Creditor (whether by reason of any statute, rule of law or legal limitation, disability or incapacity of or affecting these presents or by reason of any other fact or circumstance whatsoever and whether the transactions or any of them relating to such moneys have been void ab initio or have been subsequently avoided or whether or not any of the matters or facts relating thereto have been or ought to have been within the knowledge of the Creditor and may therefore be irrecoverable from the Guarantor by the Creditor) on the footing of the Guarantee then and in each such case the Guarantor hereby (to the extent aforesaid) as a separate and additional liability under this instrument indemnifies the lender in respect of such moneys (to the extent aforesaid) and as a principal debtor agrees to pay to the Creditor when demanded in writing a sum equal to the amount of such moneys (to the extent aforesaid) and the terms of the guarantee shall *mutatis mutandis* apply as far as possible to this indemnity.

## 15. NOTICES

- 15.01 Any notice to be given or demand to be made upon one Joint Venturer by any other shall be deemed to have been duly given or made if it be in writing and signed by the giver's solicitors or by any other person duly authorised and left at or sent through

the post in a prepaid envelope addressed to the party to whom it is given at its registered office in Queensland or to its principal place of business in Australia or at the address specified in this Agreement.

- 15.02 Notice may also be given in any of the manners specified in Section 257 of the Property Law Act 1974 (as amended).

## 16. BOOKS OF ACCOUNT

- 16.01 All usual and proper records and books of account shall be kept and there shall be prepared a yearly balance sheet and profit and loss account for the Joint Venture.
- Every party hereto shall have the right to examine and inspect any books records or accounts of the Joint Venture at any reasonable time.

## 17. GENERAL

- 17.01 Except as herein provided no salary fees commission or other compensation shall be paid by the Joint Venture to either of the Joint Venturers or any of their officers or employees for any services rendered to the Joint Venture or in connection with any of its business or property.
- 17.02 The Bankers for the Joint Venture shall be selected by the Management Committee.
- All funds of the Joint Venture shall be paid into this account or into an account which shall be controlled by the Joint Venturers and no cheque or other drawing on such account shall be made without the signature of a duly authorised person or persons agreed to by the Management Committee.
- 17.03 The Auditors (if any) of the books of account of the Joint Venture shall be determined by the Management Committee.
- 17.04 The Solicitors for the Joint Venture shall be as determined by the Management Committee.

- 17.05 There shall be no restriction on either Joint Venturer in relation to competing with the other Joint Venturer or with the Joint Venture or in relation to use of the knowledge or other advantages gained in this Joint Venture nor shall any Joint Venturer be liable to account for the profits made or the moneys received in any other business or venture.
- 17.06 No Joint Venturer shall sell, transfer, assign, set over, mortgage, charge or otherwise in any way deal with all or any part of the property whether real or personal of the Joint Venture nor its right or interest in or to any of the said property not its rights and interest in the Joint Venture under this Deed without the consent in writing of the other parties hereto but which consent shall not be capriciously or unreasonably withheld.
- 17.07 No party hereto shall enter into any contract or any engagement under which the Joint Venture would be liable for a sum greater than ONE THOUSAND DOLLARS (\$1,000.00) unless otherwise approved by the Management Committee.

## 18. INTERPRETATION

- 18.01 In this Agreement the terms hereunder shall have the following meanings:-
- " BANDSIDE PTY LTD" shall be deemed to refer to BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust and all of the covenants and obligations herein shall bind it and its successors and assigns;
- "MJ SECURITIES PTY LTD" shall be deemed to refer to MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust and all of the covenants and obligations herein shall bind it and its successors and assigns;

"CAFFE EVITA PTY LTD" shall be deemed to refer to CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust and all of the covenants and obligations herein shall bind it and its successors and assigns;

"LM INVESTMENT MANAGEMENT LIMITED" shall be deemed to refer to LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 and all of the covenants and obligations herein shall bind it and its successors and assigns;

"the Trustee" shall be deemed to refer to BARONSAND PTY LTD ACN 086 817 352 and all of the covenants and obligations herein shall bind the said BARONSAND PTY LTD ACN 086 817 352 and its successors and assigns;

"Manager" shall be deemed to refer to the person or corporation appointed under clause 3.01 and all of the covenants and obligations herein shall bind the said Manager and its successors and assigns;

"Joint Venture Property" shall be deemed to refer to the said land and any improvements including the Buildings erected or to be erected thereon together with any other property acquired from time to time by the parties for any purpose of the Joint Venture;

"Participating Interest" means with respect to each party the beneficial interest of that party in the Joint Venture and in the Joint Venture Property from time to time expressed as a percentage and also where the context permits or requires the beneficial interest of that party under the Trust;

"Participating Shares" shall be deemed to refer to the shares which each party owns or controls in the Trustee as disclosed in the Sixth Schedule hereto;

"Withdrawing Party" where more than one shall be deemed to include any of them when the context so requires;

"Acquiring Party" where more than one shall be deemed to include any of them when the context so requires;

"the Vendor" where more than one shall be deemed to include any of them when the context so requires.

- 18.02 Where it is importing the singular it shall include the plural and vice versa.
- 18.03 References to persons include companies and corporations.
- 18.04 Masculine words include the feminine and neuter gender.
- 18.05 A reference to a clause shall be a reference to a clause in this Agreement.
- 18.06 The section heading shall not affect the interpretation nor construction of this Agreement.

## 19. CONDITIONS

- 19.01 This Agreement shall be subject to and conditional upon the Joint Venturers procuring the shareholdings in the Trustee to be formalised as detailed in the Fifth Schedule hereto.

**20. NO PARTNERSHIP**

20.01 Notwithstanding any of the provisions contained herein it is expressly acknowledged and agreed to that this Agreement shall not constitute the Joint Venturers as partners for any purposes whatsoever.

**21. COUNTERPARTS**

21.01 This Agreement may be executed in any number of counterparts by the Joint Venturers and all counterparts shall together constitute the one Agreement.

THE FIRST SCHEDULE

<u>Vol.</u>	<u>Folio</u>	<u>County</u>	<u>Parish</u>	<u>Description</u>	<u>Area</u>
Title Reference 18534035		Ward	Gilston	Lot 1 on RP 216104	888 m <sup>2</sup>

THE SECOND SCHEDULE

<u>Name</u>	<u>Votes</u>
BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust	16.67%
MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust	16.66%
CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust	16.66%
LM INVESTMENT PTY LTD ACN 077 208 461	50.00%

THE THIRD SCHEDULE

("the Manager")

<u>Name</u>	<u>Principal Office</u>
LAW MORTGAGE MANAGEMENT PTY LTD in respect of all building and construction matters.	
DRA PROPERTY SERVICES in respect of all leasing and day to day management matters.	



THE FIFTH SCHEDULE

<u>Name</u>	<u>Proportion</u>
BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust	16.67%
MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust	16.66%
CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust	16.66%
LM INVESTMENT PTY LTD ACN 077 208 461	50.00%

THE SIXTH SCHEDULE

<u>Name</u>	<u>Proportion</u>
BANDSIDE PTY LTD ACN 086 913 135 atf The McMurtrie Family Trust	16.67%
MJ SECURITIES PTY LTD ACN 070 668 174 atf The Park Avenue Trust	16.66%
CAFFE EVITA PTY LTD ACN 077 844 225 atf The Butler Family Trust	16.66%
LM INVESTMENT PTY LTD ACN 077 208 461	50.00%

**البريد الإلكتروني**

AL

# Index

ASB

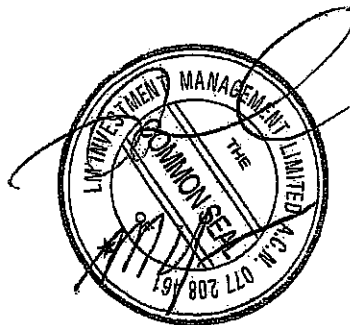
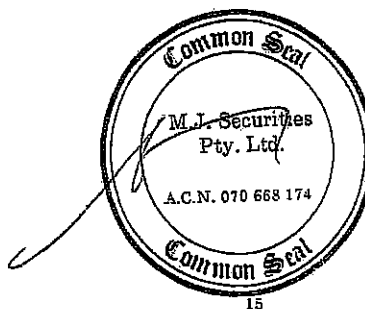
\_\_\_\_\_

*K. E. Cho*

1  
 2  
 3  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
 33  
 34  
 35  
 36  
 37  
 38  
 39  
 40  
 41  
 42  
 43  
 44  
 45  
 46  
 47  
 48  
 49  
 50  
 51  
 52  
 53  
 54  
 55  
 56  
 57  
 58  
 59  
 60  
 61  
 62  
 63  
 64  
 65  
 66  
 67  
 68  
 69  
 70  
 71  
 72  
 73  
 74  
 75  
 76  
 77  
 78  
 79  
 80  
 81  
 82  
 83  
 84  
 85  
 86  
 87  
 88  
 89  
 90  
 91  
 92  
 93  
 94  
 95  
 96  
 97  
 98  
 99  
 100  
 101  
 102  
 103  
 104  
 105  
 106  
 107  
 108  
 109  
 110  
 111  
 112  
 113  
 114  
 115  
 116  
 117  
 118  
 119  
 120  
 121  
 122  
 123  
 124  
 125  
 126  
 127  
 128  
 129  
 130  
 131  
 132  
 133  
 134  
 135  
 136  
 137  
 138  
 139  
 140  
 141  
 142  
 143  
 144  
 145  
 146  
 147  
 148  
 149  
 150  
 151  
 152  
 153  
 154  
 155  
 156  
 157  
 158  
 159  
 160  
 161  
 162  
 163  
 164  
 165  
 166  
 167  
 168  
 169  
 170  
 171  
 172  
 173  
 174  
 175  
 176  
 177  
 178  
 179  
 180  
 181  
 182  
 183  
 184  
 185  
 186  
 187  
 188  
 189  
 190  
 191  
 192  
 193  
 194  
 195  
 196  
 197  
 198  
 199  
 200  
 201  
 202  
 203  
 204  
 205  
 206  
 207  
 208  
 209  
 210  
 211  
 212  
 213  
 214  
 215  
 216  
 217  
 218  
 219  
 220  
 221  
 222  
 223  
 224  
 225  
 226  
 227  
 228  
 229  
 230  
 231  
 232  
 233  
 234  
 235  
 236  
 237  
 238  
 239  
 240  
 241  
 242  
 243  
 244  
 245  
 246  
 247  
 248  
 249  
 250  
 251  
 252  
 253  
 254  
 255  
 256  
 257  
 258  
 259  
 260  
 261  
 262  
 263  
 264  
 265  
 266  
 267  
 268  
 269  
 270  
 271  
 272  
 273  
 274  
 275  
 276  
 277  
 278  
 279  
 280  
 281  
 282  
 283  
 284  
 285  
 286  
 287  
 288  
 289  
 290  
 291  
 292  
 293  
 294  
 295  
 296  
 297  
 298  
 299  
 300  
 301  
 302  
 303  
 304  
 305  
 306  
 307  
 308  
 309  
 310  
 311  
 312  
 313  
 314  
 315  
 316  
 317  
 318  
 319  
 320  
 321  
 322  
 323  
 324  
 325  
 326  
 327  
 328  
 329  
 330  
 331  
 332  
 333  
 334  
 335  
 336  
 337  
 338  
 339  
 340  
 341  
 342  
 343  
 344  
 345  
 346  
 347  
 348  
 349  
 350  
 351  
 352  
 353  
 354  
 355  
 356  
 357  
 358  
 359  
 360  
 361  
 362  
 363  
 364  
 365  
 366  
 367  
 368  
 369  
 370  
 371  
 372  
 373  
 374  
 375  
 376  
 377  
 378  
 379  
 380  
 381  
 382  
 383  
 384  
 385  
 386  
 387  
 388  
 389  
 390  
 391  
 392  
 393  
 394  
 395  
 396  
 397  
 398  
 399  
 400  
 401  
 402  
 403  
 404  
 405  
 406  
 407  
 408  
 409  
 410  
 411  
 412  
 413  
 414  
 415  
 416  
 417  
 418  
 419  
 420  
 421  
 422  
 423  
 424  
 425  
 426  
 427  
 428  
 429  
 430  
 431  
 432  
 433  
 434  
 435  
 436  
 437  
 438  
 439  
 440  
 441  
 442  
 443  
 444  
 445  
 446  
 447  
 448  
 449  
 450  
 451  
 452  
 453  
 454  
 455  
 456  
 457  
 458  
 459  
 460  
 461  
 462  
 463  
 464  
 465  
 466  
 467  
 468  
 469  
 470  
 471  
 472  
 473  
 474  
 475  
 476  
 477  
 478  
 479  
 480  
 481  
 482  
 483  
 484  
 485  
 486  
 487  
 488  
 489  
 490  
 491  
 492  
 493  
 494  
 495  
 496  
 497  
 498  
 499  
 500  
 501  
 502  
 503  
 504  
 505  
 506  
 507  
 508  
 509  
 510  
 511  
 512  
 513  
 514  
 515  
 516  
 517  
 518  
 519  
 520  
 521  
 522  
 523  
 524  
 525

ngung

*J. A. Hart*



DATED 7 April 1999

BETWEEN:

BANDSIDE PTY LTD ACN 086 913 135 atf  
The McMurtrie Family Trust, MJ  
SECURITIES PTY LTD ACN 070 668 174  
atf The Park Avenue Trust, CAFFE EVITA  
PTY LTD ACN 077 844 225 atf The Butler  
Family Trust, LM INVESTMENT PTY LTD  
ACN 077 208 461

of the First Part

AND:

BARONSAND PTY LTD ACN 086 817 352

of the Second Part

JOINT VENTURE AGREEMENT

QUINN & COMPANY

Solicitors

4/64 Thomas Drive

CHEVRON ISLAND QLD 4217

PO BOX 6344

GOLD COAST MAIL CENTRE QLD 4217

Tel: 5538 0999

Fax: 5538 1553

JWQ:dt:25205

JOINT VENTURE TRUSTEE BARONSAND

1). (Total consideration  
\$1,667,000-)  
\$67,409 on  
\$1-20  
2). (Total consideration  
\$1,667,000-)  
(5.50% applies  
value \$133.33)  
Caffe Evita

**DEED OF RETIREMENT**

**THIS DEED** is made on the date set out in Item 1 of the Schedule.

**BETWEEN** the parties set out in Item 2 of the Schedule ("the Continuing Joint Venturers")

**AND** the party set out in Item 3 of the Schedule ("the Retiring Joint Venturer")

**AND** the party set out in Item 4 of the Schedule ("MJ Securities")

OLD DUTY - BNE

**RECITALS:**

1050258510-8

- A. The Continuing Joint Venturers, MJ Securities and the Retiring Joint Venturer have carried on the Business under the Joint Venture Agreement. 06/06/2007 10:29:19 \$67,490.00 TRFD \$1.20 TRMS \$0.00 OUTI \$67,491.20 TOT
- B. The Retiring Joint Venturer has given notice to the Continuing Joint Venturers that it wishes to withdraw from the Joint Venture and the Continuing Joint Venturers have agreed to purchase the Participation Interest of the Retiring Joint Venturer on the terms set out in this Deed.
- C. MJ Securities does not wish to acquire any part of the Retiring Joint Venturer's Participation Interest.

**OPERATIVE PARTS:**

**1. Definitions and Interpretation**

(1) Definitions

In addition to any terms defined elsewhere in this document, the following terms will, where the context allows, have the following meanings:-

- (a) "Baronsand" means Baronsand Pty Ltd ACN 086 817 352;
- (b) "Baronsand Shareholding" means a share in Baronsand held by a Joint Venturer or a person associated with a Joint Venturer;
- (c) "Business" means the business of the Joint Venture set out in Item 5 of

the Schedule;

- (d) "Financial Statements" means the accounts, tax returns or other financial records of the Joint Venture annexed to this Deed marked "A";
- (e) "GST" means the goods and services tax under the GST Act;
- (f) "GST Act" means *A New Tax System (Goods and Services) Tax Act* and includes other GST-related legislation;
- (g) "Joint Venture" means the Joint Venturers carrying on the Business as joint venturers;
- (h) "Joint Venture Agreement" means the Agreement described in Item 6 of the Schedule;
- (i) "Joint Venture Assets" means the assets of the Joint Venture set out in Item 7 of the Schedule;
- (j) "Joint Venturers" means the Continuing Joint Venturers, MJ Securities and the Retiring Joint Venturer;
- (k) "Participation Interest" means the whole of the legal and beneficial interest of a party in the Joint Venture, the Joint Venture Assets and the Business expressed as a percentage as set out in Item 8 of the Schedule;
- (l) "Relevant Share" means the percentage of the Retiring Joint Venturer's Participation Interest and the corresponding percentage of the Sale Price set out under the heading 'Share of Participation Interest' in Item 8 of the Schedule;
- (m) "Sale Price" means the price calculated in accordance with Item 9 of the Schedule for each relevant share of the Participation Interest of the Retiring Joint Venturer;

(n) "Secured Creditor" means the parties set out in Item 10 of the Schedule;

(o) "Termination Date" means the date set out in Item 11 of the Schedule.

(2) Interpretation

The rules set out below will apply in interpreting this document except where the context requires otherwise:

(a) a reference to:

(i) a person includes any type of entity or body of persons including a corporation, partnership, joint venture, trust, association or other entity or body, whether having a separate legal existence or not, and any executors, administrators, permitted assigns or other successors in law of the person;

(ii) a statute includes amendments, consolidation or replacements and any subordinate legislation issued under that statute;

(iii) a party to this or any other document includes that party's executors, administrators, permitted assigns or other successors in law;

(iv) any document includes any of its provisions as amended, novated, supplemented or replaced from time to time;

(v) a recital, clause, schedule, annexure, appendix, exhibit or similar relates to the relevant part of this document and forms part of this document;

(vi) a government includes a Federal, State or Local government or statutory authority;

(vii) one gender includes all genders;

- (viii) "writing" includes any communication by letter, facsimile or email;
  - (ix) the singular includes the plural and vice versa;
  - (x) "document" includes (but is not limited to) all forms of information, material and data however recorded or stored, including the media used for that purpose and capable of being produced, reproduced, recognised or interpreted in some manner.
- (b) If a word is defined, another part of speech has a corresponding meaning.
  - (c) If two or more parties (including those within the same defined term) will be jointly and severally bound or entitled to a benefit under this document, as the case may be.
  - (d) Any headings, index or table of contents in this document are for ease of reference only and do not affect the construction or interpretation of this document.

## **2. Withdrawal**

The Retiring Joint Venturer has given notice to the other Joint Venturers that it wishes to withdraw from the Joint Venture and now agrees to transfer its Participation Interest to the Continuing Joint Venturers on the conditions below.

## **3. Termination Date**

On the Termination Date the Retiring Joint Venturer will transfer each relevant share of its Participation Interest to each of the Continuing Joint Venturers in the proportions set out in Item 8 of the Schedule in return for the Sale Price upon the following conditions:

- (1) Each Continuing Joint Venturer must pay the relevant share of the Sale Price

to the Retiring Joint Venturer by cash or bank cheque on the Termination Date.

- (2) The Retiring Joint Venturer must execute all documents, transfers and other assurances as the Continuing Joint Venturers may reasonably require to transfer its Participation Interest to the Continuing Joint Venturers and otherwise to give effect to this Deed.
- (3) The Retiring Joint Venturer must accept payment of the Sale Price in full discharge and satisfaction of all rights conferred upon the Retiring Joint Venturer.
- (4) The Secured Creditor must release the Retiring Joint Venturer and any of its respective guarantors from all liability to the Secured Creditor in respect of any financial accommodation provided by it to the Joint Venturers and secured over the Joint Venture Assets.
- (5) Each of the parties acknowledges and agrees that the financial position of the Joint Venture is accurately reflected in the Financial Statements and, except in the case of proven gross negligence or fraud, no party will be entitled to institute any action or make any claim against another in respect of the contents of those Financial Statements.
- (6) The Retiring Joint Venturer must put the Continuing Joint Venturers in possession of its Participation Interest and hand over any indicia of title including share certificates with properly executed transfers.
- (7) The Retiring Joint Venturer must transfer or cause to be transferred its Baronsand Shareholding to the Continuing Joint Venturers or their respective nominees, as to one share each.
- (8) The Retiring Joint Venturer must cause Warwick Victor Butler to retire as officeholder of Baronsand.



- (9) Both transfers of the Relevant Shares of the Retiring Joint Venturer's Participation Interest must take place contemporaneously.

**4. Continuing Rights and Obligations**

- (1) The Continuing Joint Venturers and MJ Securities will be at liberty from the Termination Date and after payment of the Sale Price to the Retiring Joint Venturer to conduct the Business and deal with the Joint Venture Assets legally and beneficially to the absolute exclusion of the Retiring Joint Venturer.
- (2) From the Termination Date the Continuing Joint Venturers must pay or assume all debts and liabilities of the Joint Venture in proportion to their respective Participation Interests and must indemnify the Retiring Joint Venturer in respect of the same and all related actions, proceedings, costs, claims and demands.
- (3) Nothing in subclause (2) above is intended to provide an indemnity or release to the Retiring Joint Venturer in respect of any breach by it of the Joint Venture Agreement not disclosed in writing by it to the Continuing Joint Venturers prior to the date of this Deed.
- (4) The Retiring Joint Venturer waives all rights to a distribution of income from the Joint Venture for all periods up to and including the financial year ending 2007. In respect of any monies paid to the Retiring Joint Venturer for or on account of income of the Joint Venture from 1 July 2006 to the Termination Date, the Sale Price will be reduced pro-rata for the benefit of each of the Continuing Joint Venturers.
- (5) By its execution of this Deed MJ Securities consents to the transfer of the Participation Interest of the Retiring Joint Venturer to the Continuing Joint Venturers on the terms hereof and waives all rights which are inconsistent with such transfer and acknowledges compliance with the terms of the Joint Venture Agreement.

**5. Warranties by Retiring Joint Venturer**

- (1) The Retiring Joint Venturer warrants that:
- (a) It has free and unqualified capacity and power to enter into and complete this Deed;
  - (b) It is not under any legal disability;
  - (c) as trustee, it has free and unqualified power of sale under the instrument creating the trust without the consent of any other person;
  - (d) save and except for the Family Law Court proceedings in the name of Warwick Victor Butler and Elizabeth Butler, there is no current litigation by any person claiming an estate or interest in its Participation Interest. In addition to the other warranties in this Clause, in respect of such Family Law proceedings the Retiring Joint Venturer and Warwick Victor Butler as its Director and personally (as evidenced by his execution of this Deed) warrant that there is no judgment, order, undertaking, charge or encumbrance arising out of such proceedings in respect of or over the Participation Interest of the Retiring Joint Venturer which would prevent the Retiring Joint Venturer from transferring its Participation Interest or otherwise complying with its obligations under this Deed as at the Termination Date;
  - (e) there is no unsatisfied Judgment, Order or Writ of Execution affecting its Participation Interest;
  - (f) there is no Order of a Court or other competent authority affecting its ability to complete this Deed;
  - (g) it is not in liquidation, receivership or administration nor have any steps been taken to do so;
  - (h) its Participation Interest is not subject to any charges, encumbrances

or other securities or enforceable third party interests.

- (2) Each of the above warranties is given at the date of this Deed and at the Termination Date.

**6. Waiver of Pre-emption Rights**

- (1) Each of the parties acknowledges and agrees that all rights of pre-emption contained in the Joint Venture Agreement have been waived.
- (2) To the extent necessary the parties agree that the terms of the Joint Venture Agreement will be deemed to have been varied to give effect to the terms of this Deed.

**7. Supply of a Going Concern**

- (1) Words and phrases defined in the GST Act have the same meaning in this Deed unless the context indicates otherwise.
- (2) The Retiring Joint Venturer and the Continuing Joint Venturers agree that this Deed provides for the supply of a going concern, and for the protection of the Retiring Joint Venturer:
  - (a) the Continuing Joint Venturers warrant that they are registered or required to be registered under the GST Act;
  - (b) the Continuing Joint Venturers must provide to the Retiring Joint Venturer on the Termination Date written proof that the Continuing Joint Venturers are registered under the GST Act; and
  - (c) if GST is imposed on the supply under this Deed (other than due to the Retiring Joint Venturer's default), the amount the Continuing Joint Venturers must pay on the Termination Date is increased by the amount of the GST.
- (3) The Retiring Joint Venturer warrants that:

- (a) between the date of this Deed and the Termination Date, it will continue to carry on the Business; and
- (b) the Participation Interest of the Retiring Joint Venturer will comprise all of the things necessary for the continued operation of the Business.

**8. Time of the Essence**

Time shall be of the essence of this Deed.

**9. Variations to the Document**

No variation or waiver of any provision of this document will be of any effect unless it is in writing signed by the Parties.

**10. Waiver**

No failure, delay, relaxation, forbearance, extension or indulgence by a Party under this document will operate as a waiver of any right or power. The waiver of a right or power on one or more occasions does not operate as a waiver of that right or power on another occasion and the exercise of a right or power does not prevent any further exercise of that or any other right or power on any other occasion.

**11. Further Assurances**

Each Party agrees to do all things necessary (at its own expense), including obtaining the consents or signing or producing any documents, to give full effect to the provisions of this document and the transactions contemplated by it, whether before or after it is completed.

**12. No Merger**

No provision of this document merges on or by virtue of completion, expiry or termination of this document unless the context otherwise requires.

**13. Exercise of Discretion**

If a Party is required to make a determination or decision of any nature, unless the

context otherwise requires it may do so in its absolute discretion and may impose conditions in doing so.

**14. Independence and Severability**

If any provision of this document is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation in a jurisdiction:

- (1) that provision is to be read down, if possible, so as to be valid and enforceable in that jurisdiction; and
- (2) if that provision is not capable of being read down in accordance with subclause (1) above, it may be severed from this document, but only for that jurisdiction, and the validity and enforceability of the remaining provisions will not be affected.

**15. Execution**

- (1) This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- (2) The parties acknowledge that this document may be executed by one or more parties transmitting a copy which appears to be signed by that party by facsimile to one or more of the other parties. It is agreed that transmission may be limited to the actual signing page provided it is adequately identified.

**16. Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

**17. Entire Agreement**

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings and negotiations on the subject matter. If this document is inconsistent within the other agreement, understanding or

negotiation between the parties, this document prevails to the extent of the inconsistency.

**18. Power of Attorney**

The person who executes this document or any other document under it on behalf of a party under a power of attorney declares that he or she is not aware of any revocation or withdrawal of the power of attorney or any circumstance which might affect his or her authority to do so under the power of attorney as at the date of execution.

**19. Notices**

**(1) Form and Service**

A notice, consent, approval or other communication under this document must be signed on behalf of the Party giving it, addressed to the Party to whom it is to be given and may be:

- (a) delivered to the last known address of a Party on a business day between 9.00am and 5.00pm (at the place of delivery);
- (b) sent to the last known address of a Party by pre-paid post;
- (c) sent by facsimile transmission to the last known facsimile number of a Party on a business day between 9.00am and 5.00pm (at the place where the transmission is received).

**(2) Time of Service**

A notice is deemed to be given and received:

- (a) if given in accordance with subclause (1)(a) above, on the date of delivery;
- (b) if given in accordance with subclause (1)(b) above, one (1) clear business day after the day of posting to an address in Australia, or

otherwise three (3) clear business days after the day of posting;

- (c) if given in accordance with subclause (1)(c) above, on the date of written confirmation of transmission to the recipient, but if later than 5.00pm on the day of receipt of the transmission then at 9.00am on the next business day, in the place of receipt.

**20. Governing Law and Jurisdiction**

This document is governed by and construed in accordance with the law in force in Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Queensland and any corresponding appellate Court and waives any right to claim that those Courts are an inconvenient forum.

**21. Transfer Duty and Costs**

- (1) The Continuing Joint Venturers must pay all transfer duty payable to the Office of State Revenue and fees payable to the Australian Securities and Investment Commission upon the transfer of the Retiring Joint Venturer's Participation Interest to the Continuing Joint Venturers under this Deed.
- (2) Other than as referred to in sub-clause (1) above, the Retiring Joint Venturer and the Continuing Joint Venturers must each pay their own legal costs and associated outlays in relation to this Deed of Retirement and associated documents or transactions.

**22. Independent Advice**

ffrench.commercial lawyers are the solicitors for Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust and LM Investment Management Limited ACN 077 208 461 only and have prepared this Deed on their instructions and for their benefit. Any other party should seek legal advice from another solicitor about the meaning of this Deed before signing it.

Executed as a Deed.

EXECUTED BY BANDSIDE PTY LTD  
(ACN 086 913 135) as Trustee for The  
McMurtrie Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

Signature of Witness

Name of Witness

Scott James McMurtrie, Sole Director

EXECUTED BY LM INVESTMENT  
MANAGEMENT LIMITED (ACN 077  
208 461) in accordance with the  
Corporations Act 2001 and in the  
presence of:

Signature of Witness

Name of Witness

EXECUTED BY CAFFE EVITA PTY  
LTD (ACN 077 844 225) as Trustee for  
The Butler Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

Signature of Witness

Name of Witness

EXECUTED BY MJ SECURITIES PTY  
LTD (ACN 070 668 174) as Trustee for  
The Park Avenue Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

Signature of Witness

Name of Witness

Michael John Sheehy, Sole Director



EXECUTED BY **BANDSIDE PTY LTD**  
(ACN 086 913 135) as Trustee for The  
McMurtrie Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Scott James McMurtrie, Sole Director

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY **LM INVESTMENT  
MANAGEMENT LIMITED (ACN 077  
208 461)** in accordance with the  
Corporations Act 2001 and in the  
presence of:

.....  
*Secretary*  
.....  
*DIRECTOR*

.....  
Signature of Witness

*ALEXANDER DAVID MONAGHAN*  
.....  
Name of Witness

EXECUTED BY **CAFFE EVITA PTY  
LTD (ACN 077 844 225)** as Trustee for  
The Butler Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY **MJ SECURITIES PTY  
LTD (ACN 070 668 174)** as Trustee for  
The Park Avenue Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Michael John Sheehy, Sole Director

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY BANDSIDE PTY LTD  
(ACN 086 913 135) as Trustee for The  
McMurtrie Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Scott James McMurtrie, Sole Director

.....  
Signature of Witness

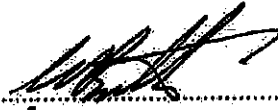
.....  
Name of Witness

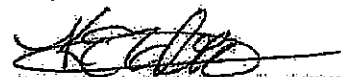
EXECUTED BY LM INVESTMENT  
MANAGEMENT LIMITED (ACN 077  
208 461) in accordance with the  
Corporations Act 2001 and in the  
presence of:

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY CAFFE EVITA PTY  
LTD (ACN 077 844 225) as Trustee for  
The Butler Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
  
( SOLE DIRECTOR )  
.....

  
.....  
Signature of Witness

KATRINA ELIZABETH TASER  
.....  
Name of Witness

EXECUTED BY MJ SECURITIES PTY  
LTD (ACN 070 668 174) as Trustee for  
The Park Avenue Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Michael John Sheehy, Sole Director

.....  
Signature of Witness

.....  
Name of Witness

## SCHEDULE

**Item 1:** Date of this Deed

The 9<sup>th</sup> day of October 2006.

**Item 2:** The Continuing Joint Venturers

Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust and LM Investment Management Limited ACN 077 208 461

**Item 3:** The Retiring Joint Venturer

Caffe Evita Pty Ltd ACN 077 844 225 as Trustee for The Butler Family Trust

**Item 4:** MJ Securities

MJ Securities Pty Ltd ACN 070 668 174 as Trustee for The Park Avenue Trust

**Item 5:** Business

The joint acquisition, development, leasing and ultimate disposal of real estate property forming part of the Joint Venture Assets.

**Item 6:** Joint Venture Agreement

An Agreement dated 7 April 1999 between Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust, MJ Securities Pty Ltd ACN 070 668 174 as Trustee for the Park Avenue Trust, Caffe Evita Pty Ltd ACN 077 844 225 as Trustee for The Butler Family Trust and LM Investment Management Limited ACN 077 208 461 of the First Part and Baronsand Pty Ltd ACN 086 817 352 of the Second Part

**Item 7:** Joint Venture Assets

1. The real estate property situated at 38 Cavill Avenue, Surfers Paradise in the State of Queensland described as:

Lot	Survey Plan	County	Parish	Title Reference
1	123106	Ward	Gilston	50322037
2	123106	Ward	Gilston	50322038
3	123106	Ward	Gilston	50322039
4	123106	Ward	Gilston	50322040
5	123106	Ward	Gilston	50322041
6	123106	Ward	Gilston	50322042
7	123106	Ward	Gilston	50322043
8	123106	Ward	Gilston	50322044
9	123106	Ward	Gilston	50322045
10	123106	Ward	Gilston	50322046
11	123106	Ward	Gilston	50322047

2. Cash at bank.

3. All other assets as set out in the Financial Statements or other records of the Joint Venture.

Item 8: Transfer Details

Transferor	Share of Participation Interest	Transferee
Caffe Evita Pty Ltd ACN 077 844 225 as Trustee for The Butler Family Trust	8.33%	LM Investment Management Limited ACN 077 208 461
Caffe Evita Pty Ltd ACN 077 844 225 as Trustee for The Butler Family Trust	8.34%	Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust
	<u>16.67%</u>	

Item 9: Sale Price

Caffe Evita Pty Ltd ACN 077 844 225 as Trustee for The Butler Family Trust The sum of \$10,000,000.00 less the amount owing to the Secured Creditor on the Termination Date multiplied by 16.67% (see Item 8).

Item 10: Secured Creditor

Suncorp-Metway Limited ACN 010 831 722

Item 11: Termination Date

On or about 10 October 2006.

DATED the 9<sup>th</sup> day of October 2006

**BETWEEN:**

**BANDSIDE PTY LTD** ACN 086 913 135 as  
Trustee for The McMurtrie Family Trust and  
**LM INVESTMENT MANAGEMENT LIMITED**  
ACN 077 208 461

"the Continuing Joint Venturers"

**AND:**

**CAFFE EVITA PTY LTD** ACN 077 844 225 as  
Trustee for The Butler Family Trust

"the Retiring Joint Venturer"

**AND:**

**MJ SECURITIES PTY LTD** ACN 070 668 174  
as Trustee for The Park Avenue Trust

"MJ Securities"

**DEED OF RETIREMENT**

**ffrench.commercial lawyers**  
Level 4 Seabank Building  
12 Marine Parade  
SOUTHPORT QLD 4215

Tel: (07) 5591 7555  
Fax: (07) 5591 7450  
Our ref: JRF:10359

\$ 67,490

Queensland Duty Paid \$	67,490 -
on amount of \$	1,667,000.00
Transfer Duty	Section 9(1) h
Signed:	18/12/06

## DEED OF RETIREMENT

M.J. Deventer P/L

**THIS DEED** is made on the date set out in Item 1 of the Schedule.

**BETWEEN** the parties set out in Item 2 of the Schedule ("the Continuing Joint Venturers")

**AND** the party set out in Item 3 of the Schedule ("the Retiring Joint Venturer")

**AND** the party set out in Item 4 of the Schedule ("Caffe Evita")

### RECITALS:

- A. The Continuing Joint Venturers, Caffe Evita and the Retiring Joint Venturer have carried on the Business under the Joint Venture Agreement.
- B. The Retiring Joint Venturer has given notice to the Continuing Joint Venturers that it wishes to withdraw from the Joint Venture and the Continuing Joint Venturers have agreed to purchase the Participation Interest of the Retiring Joint Venturer on the terms set out in this Deed.
- C. Caffe Evita does not wish to acquire any part of the Retiring Joint Venturer's Participation Interest.

### OPERATIVE PARTS:

#### 1. Definitions and Interpretation

##### (1) Definitions

In addition to any terms defined elsewhere in this document, the following terms will, where the context allows, have the following meanings:-

- (a) "Baronsand" means Baronsand Pty Ltd ACN 086 817 352;
- (b) "Baronsand Shareholding" means a share in Baronsand held by a Joint Venturer or a person associated with a Joint Venturer;
- (c) "Business" means the business of the Joint Venture set out in Item 5 of

the Schedule;

- (d) "Financial Statements" means the accounts, tax returns or other financial records of the Joint Venture annexed to this Deed marked "A";
- (e) "GST" means the goods and services tax under the GST Act;
- (f) "GST Act" means *A New Tax System (Goods and Services) Tax Act* and includes other GST-related legislation;
- (g) "Joint Venture" means the Joint Venturers carrying on the Business as joint venturers;
- (h) "Joint Venture Agreement" means the Agreement described in Item 6 of the Schedule;
- (i) "Joint Venture Assets" means the assets of the Joint Venture set out in Item 7 of the Schedule;
- (j) "Joint Venturers" means the Continuing Joint Venturers, Caffè Evita and the Retiring Joint Venturer;
- (k) "Participation Interest" means the whole of the legal and beneficial interest of a party in the Joint Venture, the Joint Venture Assets and the Business expressed as a percentage as set out in Item 8 of the Schedule;
- (l) "Relevant Share" means the percentage of the Retiring Joint Venturer's Participation Interest and the corresponding percentage of the Sale Price set out under the heading 'Share of Participation Interest' in Item 8 of the Schedule;
- (m) "Sale Price" means the price calculated in accordance with Item 9 of the Schedule for each relevant share of the Participation Interest of the Retiring Joint Venturer;

(n) "Secured Creditor" means the parties set out in Item 10 of the Schedule;

(o) "Termination Date" means the date set out in Item 11 of the Schedule.

(2) Interpretation

The rules set out below will apply in interpreting this document except where the context requires otherwise:

(a) a reference to:

- (i) a person includes any type of entity or body of persons including a corporation, partnership, joint venture, trust, association or other entity or body, whether having a separate legal existence or not, and any executors, administrators, permitted assigns or other successors in law of the person;
- (ii) a statute includes amendments, consolidation or replacements and any subordinate legislation issued under that statute;
- (iii) a party to this or any other document includes that party's executors, administrators, permitted assigns or other successors in law;
- (iv) any document includes any of its provisions as amended, novated, supplemented or replaced from time to time;
- (v) a recital, clause, schedule, annexure, appendix, exhibit or similar relates to the relevant part of this document and forms part of this document;
- (vi) a government includes a Federal, State or Local government or statutory authority;
- (vii) one gender includes all genders;



- (viii) "writing" includes any communication by letter, facsimile or email;
  - (ix) the singular includes the plural and vice versa;
  - (x) "document" includes (but is not limited to) all forms of information, material and data however recorded or stored, including the media used for that purpose and capable of being produced, reproduced, recognised or interpreted in some manner.
- (b) If a word is defined, another part of speech has a corresponding meaning.
  - (c) If two or more parties (including those within the same defined term) will be jointly and severally bound or entitled to a benefit under this document, as the case may be.
  - (d) Any headings, index or table of contents in this document are for ease of reference only and do not affect the construction or interpretation of this document.

**2. Withdrawal**

The Retiring Joint Venturer has given notice to the other Joint Venturers that it wishes to withdraw from the Joint Venture and now agrees to transfer its Participation Interest to the Continuing Joint Venturers on the conditions below.

**3. Termination Date**

On the Termination Date the Retiring Joint Venturer will transfer each relevant share of its Participation Interest to each of the Continuing Joint Venturers in the proportions set out in Item 8 of the Schedule in return for the Sale Price upon the following conditions:

- (1) Each Continuing Joint Venturer must pay the relevant share of the Sale Price

to the Retiring Joint Venturer by cash or bank cheque on the Termination Date.

- (2) The Retiring Joint Venturer must execute all documents, transfers and other assurances as the Continuing Joint Venturers may reasonably require to transfer its Participation Interest to the Continuing Joint Venturers and otherwise to give effect to this Deed.
- (3) The Retiring Joint Venturer must accept payment of the Sale Price in full discharge and satisfaction of all rights conferred upon the Retiring Joint Venturer.
- (4) The Secured Creditor must release the Retiring Joint Venturer and any of its respective guarantors from all liability to the Secured Creditor in respect of any financial accommodation provided by it to the Joint Venturers and secured over the Joint Venture Assets.
- (5) Each of the parties acknowledges and agrees that the financial position of the Joint Venture is accurately reflected in the Financial Statements and, except in the case of proven gross negligence or fraud, no party will be entitled to institute any action or make any claim against another in respect of the contents of those Financial Statements.
- (6) The Retiring Joint Venturer must put the Continuing Joint Venturers in possession of its Participation Interest and hand over any indicia of title including share certificates with properly executed transfers.
- (7) The Retiring Joint Venturer must transfer or cause to be transferred its Baronsand Shareholding to the Continuing Joint Venturers or their respective nominees, as to one share each.
- (8) The Retiring Joint Venturer must cause Michael John Sheehy to retire as officeholder of Baronsand.

- (9) Both transfers of the relevant shares of the Retiring Joint Venturer's Participation Interest must take place contemporaneously.

**4. Continuing Rights and Obligations**

- (1) The Continuing Joint Venturers and Caffè Evita will be at liberty from the Termination Date to conduct the Business and deal with the Joint Venture Assets legally and beneficially to the absolute exclusion of the Retiring Joint Venturer.
- (2) From the Termination Date the Continuing Joint Venturers must pay or assume all debts and liabilities of the Joint Venture in proportion to their respective Participation Interests and must indemnify the Retiring Joint Venturer in respect of the same and all related actions, proceedings, costs, claims and demands.
- (3) Nothing in subclause (2) above is intended to provide an indemnity or release to the Retiring Joint Venturer in respect of any breach by it of the Joint Venture Agreement not disclosed in writing by it to the Continuing Joint Venturers prior to the date of this Deed.
- (4) The Retiring Joint Venturer waives all rights to a distribution of income from the Joint Venture for all periods up to and including the financial year ending 2007. In respect of any monies paid to the Retiring Joint Venturer for or on account of income of the Joint Venture from 1 July 2006 to the Termination Date, the Sale Price will be reduced pro-rata for the benefit of each of the Continuing Joint Venturers.
- (5) By its execution of this Deed Caffè Evita consents to the transfer of the Participation Interest of the Retiring Joint Venturer to the Continuing Joint Venturers on the terms hereof and waives all rights which are inconsistent with such transfer and acknowledges compliance with the terms of the Joint Venture Agreement.

**5. Warranties by Retiring Joint Venturer**

- (1) The Retiring Joint Venturer warrants that:
  - (a) it has free and unqualified capacity and power to enter into and complete this Deed;
  - (b) it is not under any legal disability;
  - (c) as trustee, it has free and unqualified power of sale under the instrument creating the trust without the consent of any other person;
  - (d) there is no current litigation by any person claiming an estate or interest in its Participation Interest;
  - (e) there is no unsatisfied Judgment, Order or Writ of Execution affecting its Participation Interest;
  - (f) there is no Order of a Court or other competent authority affecting its ability to complete this Deed;
  - (g) it is not in liquidation, receivership or administration nor have any steps been taken to do so;
  - (h) its Participation Interest is not subject to any charges, encumbrances or other securities or enforceable third party interests.
- (2) Each of the above warranties is given at the date of this Deed and at the Termination Date.

**6. Waiver of Pre-emption Rights**

- (1) Each of the parties acknowledges and agrees that all rights of pre-emption contained in the Joint Venture Agreement have been waived.
- (2) To the extent necessary the parties agree that the terms of the Joint Venture Agreement will be deemed to have been varied to give effect to the terms of this Deed.

**7. Supply of a Going Concern**

- (1) Words and phrases defined in the GST Act have the same meaning in this Deed unless the context indicates otherwise.
- (2) The Retiring Joint Venturer and the Continuing Joint Venturers agree that this Deed provides for the supply of a going concern, and for the protection of the Retiring Joint Venturer:
  - (a) the Continuing Joint Venturers warrant that they are registered or required to be registered under the GST Act;
  - (b) the Continuing Joint Venturers must provide to the Retiring Joint Venturer on the Termination Date written proof that the Continuing Joint Venturers are registered under the GST Act; and
  - (c) if GST is imposed on the supply under this Deed (other than due to the Retiring Joint Venturer's default), the amount the Continuing Joint Venturers must pay on the Termination Date is increased by the amount of the GST.
- (3) The Retiring Joint Venturer warrants that:
  - (a) between the date of this Deed and the Termination Date, it will continue to carry on the Business; and
  - (b) the Participation Interest of the Retiring Joint Venturer will comprise all of the things necessary for the continued operation of the Business.

**8. Time of the Essence**

Time shall be of the essence of this Deed.

**9. Variations to the Document**

No variation or waiver of any provision of this document will be of any effect unless it is in writing signed by the Parties.

**10. Waiver**

No failure, delay, relaxation, forbearance, extension or indulgence by a Party under this document will operate as a waiver of any right or power. The waiver of a right or power on one or more occasions does not operate as a waiver of that right or power on another occasion and the exercise of a right or power does not prevent any further exercise of that or any other right or power on any other occasion.

**11. Further Assurances**

Each Party agrees to do all things necessary (at its own expense), including obtaining the consents or signing or producing any documents, to give full effect to the provisions of this document and the transactions contemplated by it, whether before or after it is completed.

**12. No Merger**

No provision of this document merges on or by virtue of completion, expiry or termination of this document unless the context otherwise requires.

**13. Exercise of Discretion**

If a Party is required to make a determination or decision of any nature, unless the context otherwise requires it may do so in its absolute discretion and may impose conditions in doing so.

**14. Independence and Severability**

If any provision of this document is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation in a jurisdiction:

- (1) that provision is to be read down, if possible, so as to be valid and enforceable in that jurisdiction; and
- (2) if that provision is not capable of being read down in accordance with subclause (1) above, it may be severed from this document, but only for that

jurisdiction, and the validity and enforceability of the remaining provisions will not be affected.

**15. Execution**

- (1) This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- (2) The parties acknowledge that this document may be executed by one or more parties transmitting a copy which appears to be signed by that party by facsimile to one or more of the other parties. It is agreed that transmission may be limited to the actual signing page provided it is adequately identified.

**16. Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

**17. Entire Agreement**

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings and negotiations on the subject matter. If this document is inconsistent within the other agreement, understanding or negotiation between the parties, this document prevails to the extent of the inconsistency.

**18. Power of Attorney**

The person who executes this document or any other document under it on behalf of a party under a power of attorney declares that he or she is not aware of any revocation or withdrawal of the power of attorney or any circumstance which might affect his or her authority to do so under the power of attorney as at the date of execution.

**19. Notices**

**(1) Form and Service**

A notice, consent, approval or other communication under this document must be signed on behalf of the Party giving it, addressed to the Party to whom it is to be given and may be:

- (a) delivered to the last known address of a Party on a business day between 9.00am and 5.00pm (at the place of delivery);
- (b) sent to the last known address of a Party by pre-paid post;
- (c) sent by facsimile transmission to the last known facsimile number of a Party on a business day between 9.00am and 5.00pm (at the place where the transmission is received).

**(2) Time of Service**

A notice is deemed to be given and received:

- (a) if given in accordance with subclause (1)(a) above, on the date of delivery;
- (b) if given in accordance with subclause (1)(b) above, one (1) clear business day after the day of posting to an address in Australia, or otherwise three (3) clear business days after the day of posting;
- (c) if given in accordance with subclause (1)(c) above, on the date of written confirmation of transmission to the recipient, but if later than 5.00pm on the day of receipt of the transmission then at 9.00am on the next business day, in the place of receipt.

**20. Governing Law and Jurisdiction**

This document is governed by and construed in accordance with the law in force in Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the



Courts of Queensland and any corresponding appellate Court and waives any right to claim that those Courts are an inconvenient forum.


**21. Independent Advice**

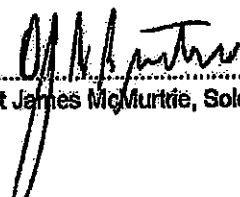
French commercial lawyers are the solicitors for Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust and LM Investment Management Limited ACN 077 208 461 only and have prepared this Deed on their instructions and for their benefit. Any other party should seek legal advice from another solicitor about the meaning of this Deed before signing it.

Executed as a Deed.

EXECUTED BY BANDSIDE PTY LTD  
(ACN 086 913 135) as Trustee for The  
McMurtrie Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

  
Signature of Witness

  
Name of Witness

  
Scott James McMurtrie, Sole Director

EXECUTED BY LM INVESTMENT  
MANAGEMENT LIMITED (ACN 077  
208 461) in accordance with the  
Corporations Act 2001 and in the  
presence of:

Signature of Witness

Name of Witness

Courts of Queensland and any corresponding appellate Court and waives any right to claim that those Courts are an inconvenient forum.

21. **Independent Advice**

French commercial lawyers are the solicitors for Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust and LM Investment Management Limited ACN 077 208 461 only and have prepared this Deed on their instructions and for their benefit. Any other party should seek legal advice from another solicitor about the meaning of this Deed before signing it.

Executed as a Deed.

EXECUTED BY **BANDSIDE PTY LTD**  
(**ACN 086 913 135**) as Trustee for The  
McMurtrie Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
Scott James McMurtrie, Sole Director

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY **LM INVESTMENT**  
**MANAGEMENT LIMITED (ACN 077**  
**208 461)** in accordance with the  
Corporations Act 2001 and in the  
presence of:

.....  
SECRETARY

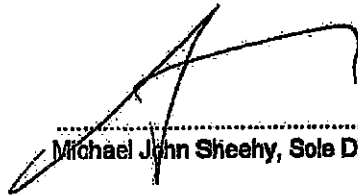
.....  
DIRECTOR

.....  
Signature of Witness

**ALEXANDER DAVID MONAGHAN**  
.....  
Name of Witness

EXECUTED BY MJ SECURITIES PTY  
LTD (ACN 070 668 174) as Trustee for  
The Park Avenue Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

)  
)  
)  
)



.....  
Michael John Sheehy, Sole Director

*L. J. L.*  
.....  
Signature of Witness

LYNDAL TOTMAN  
.....  
Name of Witness

EXECUTED BY CAFFE EVITA PTY  
LTD (ACN 077 844 225) as Trustee for  
The Butler Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

)  
)  
)  
)

.....  
.....

.....  
Signature of Witness

.....  
Name of Witness

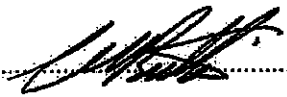
EXECUTED BY MJ SECURITIES PTY  
LTD (ACN 070 668 174) as Trustee for  
The Park Avenue Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:


.....  
Michael John Sheehy, Sole Director

.....  
Signature of Witness

.....  
Name of Witness

EXECUTED BY CAFFE EVITA PTY  
LTD (ACN 077 844 225) as Trustee for  
The Butler Family Trust in accordance  
with the Corporations Act 2001 and in  
the presence of:

.....  
  
( SOLE DIRECTOR )  
.....

  
.....  
Signature of Witness

KATRINA ELIZABETH TABOR  
.....  
Name of Witness

records of the Joint Venture.

Item 8:

Transfer Details

Transferor	Share of Participation Interest	Transferee
MJ Securities Pty Ltd ACN 070 668 174 as Trustee for The Park Avenue Trust	8.33%	LM Investment Management Limited ACN 077 208 461
MJ Securities Pty Ltd ACN 070 668 174 as Trustee for The Park Avenue Trust	8.34%	Bandside Pty Ltd ACN 086 913 135 as Trustee for The McMurtrie Family Trust
	<u>16.67%</u>	

Item 9:

Sale Price

MJ Securities Pty Ltd CAN 070 668 174 as Trustee for The Park Avenue Trust The sum of \$10,000,000.00 less the amount owing to the Secured Creditor on the Termination Date multiplied by 16.67% (see Item 8).

Item 10:

Secured Creditor

Suncorp-Metway Limited ACN 010 831 722

Item 11:

Termination Date

On or about 10 October 2006.

DATED the 9<sup>th</sup> day of October 2006

**BETWEEN:**

**BANDSIDE PTY LTD** ACN 086 913 135 as  
Trustee for The McMurtrie Family Trust and  
**LM INVESTMENT MANAGEMENT LIMITED**  
ACN 077 208 481

"the Continuing Joint Venturers"

**AND:**

**MJ SECURITIES PTY LTD** ACN 070 668 174  
as Trustee for The Park Avenue Trust

"the Retiring Joint Venturer"

**AND:**

**CAFFE EVITA PTY LTD** ACN 077 844 225 as  
Trustee for The Butler Family Trust

"Caffe Evita"

**DEED OF RETIREMENT**

**ffrench.commercial lawyers**  
Level 4 Seabank Building  
12 Marine Parade  
SOUTHPORT QLD 4215

Tel: (07) 5591 7555  
Fax: (07) 5591 7450  
Our ref: JRF:10359

<b>Search Results for:</b>	<b>Historical Search</b>	<b>Organisation Number</b>	<b>086817352</b>
----------------------------	--------------------------	----------------------------	------------------

\*Extracted from ABR's database at 18:05:46 on 04/04/2013

\*Extracted from ASIC's database at 18:05:42 on 04/04/2013

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

## Organisation Details

Organisation Name	BARONSAND PTY LTD
Australian Company Number	<u>086817352</u>
State of Incorporation	Queensland
Registration Date	22/03/1999
Organisation Number Heading	ACN (Australian Company Number)
Review Date	22/03/2014

Document Number	014237653
Details Type(current/ceased)	Current
Details Start Date	22/03/1999
Organisation Name	BARONSAND PTY LTD
Name Start Date	22/03/1999
Organisation Status	Registered
Organisation Type	Australian Proprietary Company
Organisation Class	Limited By Shares
Organisation Sub-Class	Proprietary Company
Disclosing Entity Flag	N

## Company Address

Document Number	08681735J
Document Number Qualifier	(AR 1999)
Details Type(current/ceased/future)	Current
Address Type	Registered Office
Address Start Date	05/05/1999
Address	PANNELL KERR FORSTER LEVEL 5 RSL CENTRE 9 BEACH ROAD SURFERS PARADISE QLD 4217

Document Number	014237653
Details Type(current/ceased/future)	Ceased/Former
Address Type	Registered Office
Address Start Date	22/03/1999
Address End Date	04/05/1999
Address	UNIT 2 33 CROMBIE AVENUE BUNDALL QLD 4217

Document Number 014882123  
Details  
Type(current/ceased/future) Current  
Address Type Principal Place of Business  
Address Start Date 28/04/1999  
Address LEVEL 5 R S LEVEL CENTRE 9 BEACH ROAD SURFERS PARADISE QLD 4217

Document Number 014237653  
Details  
Type(current/ceased/future) Ceased/Former  
Address Type Principal Place of Business  
Address Start Date 22/03/1999  
Address End Date 27/04/1999  
Address UNIT 2 33 CROMBIE AVENUE BUNDALL QLD 4217

---

### ***Company Office Holders***

---

Document Number 014874724  
Details Type(current/former) Current  
Role Director  
Appointment Date 29/03/1999  
Full Name MCMURTRIE SCOTT JAMES  
Birth Details 09/09/1954 PROSERPINE QLD  
Address 115 SKYLINE TERRACE BURLEIGH HEADS QLD 4220

Document Number 7E1009017  
Details Type(current/former) Current  
Role Director  
Appointment Date 29/03/1999  
Full Name DRAKE PETER CHARLES  
Birth Details 23/08/1955 WHANGARA NEW ZEALAND  
Address 13 ALBATROSS AVENUE NOBBY BEACH QLD 4218

Document Number 014874724  
Details Type(current/former) Ceased/Former  
Role Director  
Appointment Date 29/03/1999  
Cease Date 10/10/2006  
Full Name BUTLER WARWICK VICTOR  
Birth Details 25/05/1951 SYDNEY NSW  
Address 28 ROSEMONT AVENUE BROADBEACH WATERS QLD 4218

Document Number 1E0137999  
Details Type(current/former) Ceased/Former  
Role Director



**Appointment Date** 29/03/1999  
**Cease Date** 10/10/2006  
**Full Name** SHEEHY MICHAEL JOHN  
**Birth Details** 30/06/1951 SURFERS PARADISE QLD  
**Address** UNIT 1 5-7 CAMPBELL STREET SORRENTO QLD 4217

**Document Number** 014874724  
**Details Type(current/former)** Ceased/Former  
**Role** Director  
**Appointment Date** 29/03/1999  
**Cease Date** 27/03/2002  
**Full Name** DWYER MICHAEL PATRICK  
**Birth Details** 01/05/1955 WARWICK QLD  
**Address** 1A YACHT STREET SOUTHPORT QLD 4215

**Document Number** 014237653  
**Details Type(current/former)** Ceased/Former  
**Role** Director  
**Appointment Date** 22/03/1999  
**Cease Date** 29/03/1999  
**Full Name** GILLTRAP GEORGE STEPHENSON  
**Birth Details** 20/02/1949 ROTORUA NEW ZEALAND  
**Address** 16 DOUBLEVIEW DRIVE ELANORA QLD 4221

**Document Number** 014874724  
**Details Type(current/former)** Current  
**Role** Secretary  
**Appointment Date** 29/03/1999  
**Full Name** MCMURTRIE SCOTT JAMES  
**Birth Details** 09/09/1954 PROSERPINE QLD  
**Address** 115 SKYLINE TERRACE BURLEIGH HEADS QLD 4220

**Document Number** 014237653  
**Details Type(current/former)** Ceased/Former  
**Role** Secretary  
**Appointment Date** 22/03/1999  
**Cease Date** 29/03/1999  
**Full Name** GILLTRAP GEORGE STEPHENSON  
**Birth Details** 20/02/1949 ROTORUA NEW ZEALAND  
**Address** 16 DOUBLEVIEW DRIVE ELANORA QLD 4221

---

### ***Share Structure – Issued and Paid Capital***

---

**Document Number** 0E9946781  
**Details Type(current/ceased)** Current

Share Class Code	ORD
Share Class Title	ORDINARY
Number of Shares Issued	12
Total Paid on Shares issues	\$ 12.00

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

---

## Share Holders

---

Document Number	1F0120018
Details Type(current/ceased)	Current
Class Code	ORD
Number Held	4
Beneficially Owned	N
Fully Paid	Y
Member Organisation Number	<u>086913135</u>
Member Name	BANDSIDE PTY LTD
Address	115 SKYLINE TERRACE BURLEIGH HEADS QLD 4220
Joint Holding Indicator	N
Member Organisation Number Heading	ACN (Australian Company Number)

Document Number	7E1005955
Details Type(current/ceased)	Current
Class Code	ORD
Number Held	8
Beneficially Owned	N
Fully Paid	Y
Full Name	<u>DRAKE PETER CHARLES</u>
Address	13 ALBATROSS AVENUE NOBBY BEACH QLD 4218
Joint Holding Indicator	N
Member Organisation Number Heading	ACN (Australian Company Number)

Document Number	08681735J
Document Number Qualifier	(AR 1999)
Details Type(current/ceased)	Ceased/Former
Class Code	ORD
Number Held	2
Beneficially Owned	N
Fully Paid	Y
Member Organisation Number	<u>077844225</u>
Member Name	CAFFE EVITA PTY LTD
Address	PANNELL KERR FORSTER LEVEL 5 9 BEACH ROAD SURFERS PARADISE QLD 4217

Joint Holding Indicator	N
Member Organisation Number Heading	ACN (Australian Company Number)
Document Number	08681735J
Document Number Qualifier	(AR 1999)
Details Type(current/ceased)	Ceased/Former
Class Code	ORD
Number Held	2
Beneficially Owned	N
Fully Paid	Y
Member Organisation Number	<u>070668174</u>
Member Name	M.J. SECURITIES PTY. LTD.
Address	PANNELL KERR FORSTER 'RSL BUILDING' LEVEL 5 9 BEACH ROAD SURFERS PARADISE QLD 4217
Joint Holding Indicator	N
Member Organisation Number Heading	ACN (Australian Company Number)
Australian Business Number	75070668174
Document Number	0E9946781
Details Type(current/ceased)	Ceased/Former
Class Code	ORD
Number Held	3
Beneficially Owned	N
Fully Paid	Y
Full Name	<u>DWYER MICHAEL PATRICK</u>
Address	37 NASSIM ROAD #09/03 NASSIM R SINGAPORE
Joint Holding Indicator	N
Member Organisation Number Heading	ACN (Australian Company Number)

---

### ***Company Document Listing***

---

Document Number	<u>7E1009017</u>
Date Received	16/02/2007
Form Code	492
Date Processed	16/02/2007
Number of Pages(if Imaged)	2
Effective Date	16/02/2007
Sub-form Code	492
Additional Description	Request For Correction
Additional Description	Alters 0E6 784 250

Document Number	<u>7E1005945</u>
Date Received	14/02/2007

Form Code	484
Date Processed	14/02/2007
Number of Pages(if Imaged)	2
Effective Date	14/02/2007
Sub-form Code	484A1
Additional Description	Change to Company Details Change Officeholder Name Or
Additional Description	Address

Document Number	<u>7E1005955</u>
Date Received	14/02/2007
Form Code	484
Date Processed	14/02/2007
Number of Pages(if Imaged)	2
Effective Date	14/02/2007
Sub-form Code	484
Additional Description	Change to Company Details
Sub-form Code	484A1
Additional Description	Change Officeholder Name or Address
Sub-form Code	484A2
Additional Description	Change Member Name or Address

Document Number	<u>1F0120018</u>
Date Received	06/11/2006
Form Code	484
Date Processed	06/11/2006
Number of Pages(if Imaged)	8
Effective Date	06/11/2006
Sub-form Code	484
Additional Description	Change to Company Details
Sub-form Code	484E
Additional Description	Appointment or Cessation of a Company Officeholder
Sub-form Code	484N
Additional Description	Changes to (Members) Share Holdings

Document Number	<u>1E0137999</u>
Date Received	29/07/2004
Form Code	484
Date Processed	29/07/2004
Number of Pages(if Imaged)	2
Effective Date	28/07/2004
Sub-form Code	484A1
Additional Description	Change to Company Details Change Officeholder Name Or
Additional Description	Address

Document Number	<u>0E9946781</u>
-----------------	------------------

Date Received	10/06/2004
Form Code	484
Date Processed	10/06/2004
Number of Pages(if Imaged)	2
Effective Date	10/06/2004
Sub-form Code	484
Additional Description	Change to Company Details
Sub-form Code	484O
Additional Description	Changes to Share Structure
Sub-form Code	484A2
Additional Description	Change Member Name or Address

Document Number	<u>0E8602721</u>
Date Received	07/02/2003
Form Code	316
Date Processed	08/02/2003
Number of Pages(if Imaged)	3
Effective Date	31/01/2003
Document Number Qualifier	(AR 2002)
Sub-form Code	316L
Additional Description	Annual Return Annual Return – Proprietary Company

Document Number	<u>0E8586350</u>
Date Received	06/02/2003
Form Code	304
Date Processed	07/02/2003
Number of Pages(if Imaged)	1
Effective Date	27/03/2002
Sub-form Code	304A
Additional Description	Notification of Change to Officeholders of Australian
Additional Description	Company

Document Number	<u>0E6784250</u>
Date Received	14/01/2002
Form Code	316
Date Processed	04/02/2002
Number of Pages(if Imaged)	3
Effective Date	14/01/2002
Document Number Qualifier	(AR 2001)
Sub-form Code	316L
Additional Description	Annual Return Annual Return – Proprietary Company
Additional Description	Altered by 7E1 009 017

Document Number	<u>08681735K</u>
Date Received	22/01/2001

Form Code	316
Date Processed	01/03/2001
Number of Pages(if Imaged)	4
Effective Date	11/01/2001
Document Number Qualifier	(AR 2000)
Sub-form Code	316L
Additional Description	Annual Return Annual Return – Proprietary Company

Document Number	<u>08681735J</u>
Date Received	25/01/2000
Form Code	316
Date Processed	15/03/2000
Number of Pages(if Imaged)	3
Effective Date	21/01/2000
Document Number Qualifier	(AR 1999)
Sub-form Code	316L
Additional Description	Annual Return Annual Return – Proprietary Company

Document Number	<u>014549465</u>
Date Received	06/07/1999
Form Code	309
Date Processed	06/07/1999
Number of Pages(if Imaged)	27
Effective Date	28/06/1999
Sub-form Code	309A
Additional Description	Notification of Details of a Charge

Document Number	<u>014874724</u>
Date Received	10/05/1999
Form Code	304
Date Processed	10/05/1999
Number of Pages(if Imaged)	2
Effective Date	29/03/1999
Sub-form Code	304A
Additional Description	Notification of Change to Officeholders of Australian
Additional Description	Company

Document Number	<u>014235945</u>
Date Received	29/04/1999
Form Code	207
Date Processed	29/04/1999
Number of Pages(if Imaged)	1
Effective Date	29/03/1999
Sub-form Code	207
Additional Description	Notification of Share Issue

Document Number	<u>014882123</u>
Date Received	28/04/1999
Form Code	203
Date Processed	29/04/1999
Number of Pages(if Imaged)	1
Effective Date	28/04/1999
Sub-form Code	203
Additional Description	Notification Of
Sub-form Code	203A
Additional Description	Change of Address
Sub-form Code	203G
Additional Description	Change of Address – Principal Place of Business
Document Number	<u>014237851</u>
Date Received	08/04/1999
Form Code	370
Date Processed	08/04/1999
Number of Pages(if Imaged)	2
Effective Date	08/04/1999
Sub-form Code	370
Additional Description	Notice of Retirement or Resignation By Director or Secretary
Document Number	<u>014237850</u>
Date Received	08/04/1999
Form Code	284
Date Processed	08/04/1999
Number of Pages(if Imaged)	1
Effective Date	29/03/1999
Sub-form Code	284A
Additional Description	Notification of Share Cancellation Redeemable Preference
Additional Description	Shares
Document Number	<u>014237653</u>
Date Received	22/03/1999
Form Code	201
Date Processed	22/03/1999
Number of Pages(if Imaged)	3
Effective Date	22/03/1999
Sub-form Code	201C
Additional Description	Application For Registration as a Proprietary Company

---

## ***Annual Returns***

---

Outstanding	N
Return Due Date	31/01/2000
Annual Return Year	2000
Outstanding	N
Return Due Date	31/01/2001
Annual Return Year	2001
Outstanding	N
Return Due Date	31/01/2002
Annual Return Year	2002
Outstanding	N
Return Due Date	31/01/2003

---

### **Contact Address**

---

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

Details Type(current/ceased/future)	Current
Address Type	Contact Address for ASIC use only
Address Start Date	22/10/2003
Address	PO BOX 588 SURFERS PARADISE QLD 4217
Details Type(current/ceased/future)	Ceased/Former
Address Type	Contact Address for ASIC use only
Address Start Date	28/06/2003
Address End Date	22/10/2003
Address	PRIVATE BAG 9 CASTLE HILL NSW 1765

---

### **End of Search Report**

---

Page Generated: 04/04/2013  
18:05

Copyright © 2013 Australian Business Research. A division of Veda Advantage  
Information Services and Solutions Limited. ABN 26 000 602 862

---

The materials presented on this site are distributed as an information source only. The information recorded in this document is provided on the basis that readers will be responsible for making their own assessment of the information and are advised to verify all relevant representations, statements and information. No liability (in contract, tort or otherwise) will be accepted for any loss or damage incurred as a result of reliance upon any material contained in this publication, or for any information or advice provided in this publication or incorporated into it.