Bentham

EUROPE LIMITED

Submission to the Ministry of Security and Justice

Dutch Draft Bill on Redress of Mass Damages in a Collective Action

14 October 2014

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PART A: BACKGROUND

1. Introduction

1.1. Bentham Europe Limited ("**BEL**") is grateful for the invitation to make these submissions to the Ministry of Law of Security and Justice in the Netherlands (the "**Ministry**") on the Dutch draft bill on Redress of Mass Damages in a Collective Action (the "**draft Bill**').

1.2. The reality today is that access to justice is very much dependent on capacity to pay. Litigants face very high costs and serious financial risks (including adverse costs orders if they lose) if they wish to pursue or defend claims. These costs and risks, which are often difficult or impossible for litigants to predict in advance, are inherent in all litigation and, we expect, in the courts in the Netherlands. They are, without doubt, serious barriers to access to justice and to the effective enforcement of civil law.

1.3. Litigation funding improves access to justice by allowing litigants with meritorious claims but limited financial means, to prosecute and resolve their claims.

1.4. BEL strongly endorses the draft Bill's attempt to enhance the efficient and effective redress of mass damages claims whilst striking a balance between better access to justice in mass damages claims and the protection of the interests of person held liable.

1.5. In BEL's submission, allowing the principled development of Third Party Funders ("**TPF**") in the Netherlands will not only enhance the Netherland's status as a leading centre for international dispute resolution, but it will also improve access to justice for European citizens and businesses. The Netherlands is in the happy position of being able to draw on the numerous lessons learned by other countries with greater experience of TPF, including Australia which is recognised as a pioneer of TPF for commercial litigation in the common law world.

2. About Bentham IMF Limited

2.1 Bentham IMF Limited ("**IMF**"), a joint venture owner of BEL, is Australia's largest litigation funder. IMF listed on the Australian Securities Exchange in 2001 (specifically to promote transparency in what was a new industry, and not just a new business in an established industry) and has a market capitalisation of around $320m (as at 21 May 2014). IMF operates from offices in Sydney and Perth with smaller offices in Melbourne, Adelaide and Brisbane and, through a subsidiary (Bentham IMF LLC), in New York and Los Angeles. IMF has recently opened an office in London through BEL. Information on IMF can be found on its website at www.imf.com.au.

2.2 IMF has built its business around meeting some of the demand for funding from claimants with strong legal claims who lack the financial resources necessary to pursue their claims through the civil justice system.

2.3 IMF funds three types of litigation:

(a) single party disputes which include general commercial disputes, claims against estates and trustees, building and construction disputes, patents, professional indemnity claims, contract disputes and claims against insurers;

(b) insolvency proceedings, including claims for insolvent trading, preferences and breach of directors' duties; and

(c) multi-party litigation, including class actions against the banks over unfair penalty fees, securities class actions, cartel claims, claims against the issuers and raters of collateralised debt obligations and other complex credit products and claims involving the provision of financial services.

2.4 As IMF adopts stringent criteria by which it assesses claims for funding, currently less than 5% of applications IMF receives are funded. There is therefore a significant demand for litigation funding.

2.5 Over the last 10 years IMF itself has funded claims brought by over 300,000 claimants and has made access to justice a practical reality for those claimants. IMF's funding has helped to balance the playing field for its clients, who usually face opponents who are far larger and better resourced than they are. It has facilitated the enforcement of Australia's continuous disclosure regime, trade practices, insolvency, financial services and competition laws.[1] In addition to funding litigation in Australia, IMF is funding or has funded litigation in New Zealand, Hong Kong, the United Kingdom, the Netherlands, South Africa and the United States.

2.6 IMF's objectives are closely aligned with those of the claimants it funds: namely to achieve the just, quick, inexpensive and efficient resolution of claims through appropriate use of the civil justice system. However, the practical attainment of those objects is another matter.

2.7 IMF provides funding for claimants' own legal fees and expenses (including counsels' fees, witness expenses and court costs), agrees to pay any adverse costs orders (incurred during the term of the funding agreement) which might be made if the claims are unsuccessful and will supply any security for costs which the court may order IMF's clients to provide. As IMF stands behind its clients' potential financial obligations to defendants, IMF ensures that successful defendants in litigation it funds will be paid their recoverable costs. IMF is only paid if the claimants are successful.

2.8 In addition to funding, IMF provides other services to its clients which are normally set out in the funding agreement. These include investigating the claims and the prospects of them being resolved by means other than litigation (such as by direct negotiation with the defendant or through alternative dispute resolution, such as mediation or expert determination). In funded class actions, IMF plays a key role in locating potential claimants and informing them of the opportunity to join the class action to enforce their rights.

2.9 IMF manages the litigation for its funded claimants (to a lesser degree with insolvency practitioners), which removes a significant burden and distraction from their shoulders. IMF negotiates litigation budgets with the claimants' lawyers, ensures (so far as possible) that the legal costs and strategies are proportionate to the sums at stake and gives instructions to the lawyers on a day-to-day basis (subject always to the claimants' rights to override IMF's instructions and the lawyers' paramount professional duties to the claimants). IMF assists the claimants on litigation strategy and attends and participates in settlement discussions.

2.10 In return for IMF's promise of funding, claimants assign to IMF a share of any damages or settlement proceeds that are recovered from the opposing parties to their claims. The assignment includes reimbursement of all amounts IMF has paid, a project management fee (which is a percentage of the legal budget) and a percentage of the recoveries (typically in a range of 25 – 35% depending on claim size, resolution sum, expected duration to resolution and risks undertaken). IMF is paid nothing if the claims are unsuccessful (and, in fact, will likely have to pay a substantial adverse costs order depending on the jurisdiction). In some jurisdictions (particularly the United States and Europe), IMF's fee may be calculated as a multiple (e.g. 3x) of the sum invested.

2.11 IMF applies strict investment criteria when deciding which cases to fund and whether to continue funding. IMF will only fund claims which have strong prospects of success, are against

[1] S H Lim, "Do litigation funders add value to corporate governance in Australia?" (2011) 29 C & SLJ 135 at 146: "As litigation funders are focused on maximising their returns on investments, they also have strong incentives to monitor corporate disclosures, share price movements and regulator inquiries in order to identify litigation that has the best prospects of success. Thus, litigation funders are acting as private enforcers of statutory causes of action as well as providing individual shareholders with the means and incentives to monitor corporate conduct."

defendants with a verifiable capacity to pay any likely judgment, are liable to be proved primarily by reference to objective written evidence rather than potentially contested oral evidence and are likely to have a claim size of not less than A$5m for single party matters or A$30m for multi-party litigation.[2]

2.12 IMF may cease funding litigation. If IMF does so, IMF remains liable to meet its obligations to pay the claimant's legal costs incurred, and any adverse cost orders for costs incurred by the defendant, during the period IMF was funding the litigation. IMF remains entitled to be reimbursed costs it has paid from any recoveries the claimant may later receive from the case.

2.13 IMF does not generally fund certain categories of claims, including claims arising in the family law, personal injury, defamation and criminal areas.

IMF's Performance

2.14 From 2001 (when it listed) until 30 April 2014, IMF had commenced and resolved 155 funded cases with an average investment duration of 2.3 years. Of those 155 cases, 100 were settled, 14 went to judgment or on appeal and were won, 6 were lost at judgment and IMF withdrew from 35.[3] IMF and its clients were not required to pay any adverse costs orders in relation to the claims from which IMF withdrew its funding.

2.15 From these results, IMF generated recoveries of A$1.4bn of which A$919m (65%) has been paid to IMF's clients, A$175m (12%) has been used in reimbursing IMF's costs (principally in paying the lawyers' fees and disbursements incurred in prosecuting clients' claims) and A$323m (23%) represents revenue to IMF after deduction of litigation costs paid by IMF. Lost cases cost IMF A$15.8m (including adverse costs) and cases from which IMF withdrew funding before resolution a further A$4.1m, together representing 4% of revenue. IMF has historically generated an average 298% gross return on funds invested.[4]

2.16 As at 31 December 2013, IMF had net assets of A$196.9m, of which A$85m was held in cash and cash equivalents. In April 2014, IMF raised an additional A$50m through a bond issue.

2.17 As at 31 March 2014, IMF had investments in 29 claims with an estimated claim value of A$2.2bn. Claims worth in excess of A$50m (essentially large multi-party claims) accounted for 79% of the total portfolio value. IMF's net profit after tax in HY2014 was A$9.1m.

2.18 Annexed, as Appendix 1 to this submission, is a summary of IMF's case management results from 19 October 2001 to 30 June 2013 which has been independently audited by Ernst & Young.

3. The status of TPF in Australian law

3.1 As one Australian commentator has observed, as a result of the High Court's decision in 2006 in the *Fostif* case[5] litigation funding "went from pariah to an accepted part of civil litigation" in Australia.[6]

3.2 Prior to *Fostif*, the development of litigation funding had been inhibited by uncertainty over the extent to which medieval prohibitions on maintenance and champerty, inherited from the English legal system, still held sway in Australian law.

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[2] J Walker, S Khouri and W Attrill, *Funding Criteria for Class Actions*, (2009) 32 UNSW LJ 1036.

[3] Clive Bowman, Executive Director/Director of Operations, Bentham IMF Limited, PowerPoint presentation to ASX Spotlight Conference (Hong Kong and Singapore – 27, 29 May 2014), 12.

[4] Idem.

[5] *Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386.

[6] M Legg, *Case Management and Complex Civil Litigation* (The Federation Press, 2011), 231.

3.3 Maintenance involves the provision, "without lawful justification", of financial assistance to a person to bring or defend civil proceedings. Champerty is an aggravated form of maintenance in which the maintainer agrees to receive a share of the proceeds of the action. Originally the prohibitions were developed to protect the weak and developing justice system from abuse wrought by rich and powerful feudal lords. But in time they came to have the opposite effect: in the words of Jeremy Bentham, they gave wealth the "monopoly of justice against poverty".[7]

3.4 *Fostif* concerned New South Wales' law. New South Wales had abolished, by statute, maintenance and champerty as torts and crimes, but had exempted "any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal." *Fostif* established (by a 5:2 majority) that the litigation funding arrangements in that case were neither an abuse of the court's process nor otherwise illegal.

3.5 The plurality in the High Court, Gummow, Hayne and Crennan JJ (with whom Gleeson CJ and Kirby J concurred), said:

> "*Shorn of the terms of disapprobation, the appellants' submissions can be seen to fasten upon Firmstones' seeking out those who may have claims, and offering terms which not only gave Firmstones control of the litigation but also would yield, so Firmstones hoped and expected, a significant profit to Firmstones. But none of these elements, alone or in combination, warrant condemnation as being contrary to public policy or leading to any abuse of process.*
>
> *As Mason P rightly pointed out in the Court of Appeal, many people seek profit from assisting the processes of litigation. That a person who hazards funds in litigation wishes to control the litigation is hardly surprising. That someone seeks out those who may have a claim and excites litigation where otherwise there would be none could be condemned as contrary to public policy only if a general rule against the maintenance of actions were to be adopted. But that approach has long since been abandoned . . . And if the conduct is neither criminal nor tortious, what would be the ultimate foundation for a conclusion not only that maintaining an action (or maintaining an action in return for a share of the proceeds) should be considered as contrary to public policy, but also that the claim that is maintained should not be determined by the court whose jurisdiction otherwise is regularly invoked?*"[8]

3.6 Their Honours went on to consider two fears associated with litigation funding: fears about possible adverse effects on the litigation process and fears about the fairness of the bargain struck between the funder and the client. They concluded that: "To meet these fears by adopting a rule in either form would take too broad an axe to the problems that may be seen to lie behind the fears."[9]

3.7 They rejected a role for the courts in assessing whether a funding agreement was "fair" as this assumed, wrongly, that "there is some ascertainable objective standard against which fairness is to be measured and that the courts should exercise some (unidentified) power to relieve persons of full age and capacity from bargains otherwise untainted by infirmity."[10] And in response to Lord Denning MR's oft-repeated warning in *In re Trepca Mines Ltd (No 2)*[11] that the "common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame damages, to suppress evidence, or even to suborn witnesses", the majority replied:[12]

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[7] Lord Neuberger, "From Barratry, Maintenance and Champerty to Litigation Funding", Harbour Litigation Funding First Annual Lecture, Gray's Inn, 8 May 2013, 15.

[8] (2006) 229 CLR 386, 433 – 434 per Gummow, Hayne, Crennan JJ.

[9] (2006) 229 CLR 386, 433 – 434 per Gummow, Hayne, Crennan JJ.

[10] Ibid, 434.

[11] [1963] Ch 199 at 219-220.

[12] (2006) 229 CLR 386, 435.

> "*Why is that fear not sufficiently addressed by existing doctrines of abuse of process and other procedural and substantive elements of the court's processes? And if lawyers undertake obligations that may give rise to conflicting duties there is no reason proffered for concluding that present rules regulating lawyers' duties to the court and to clients are insufficient to meet the difficulties that are suggested might arise.*"

3.8 The plurality recognised the practical reality of multi-party litigation and the positive role that funding can play in this regard. Underpinning their judgment was a determination to ensure that the defendants were not able to take advantage of "some general rule of public policy that a defendant may invoke to prevent determination of the claims that are made against the defendant."[13]

3.9 It is important to note that the High Court's approval in *Fostif* extended to a funder (not IMF, incidentally) who:

- sought out the claimants through an extensive advertising campaign;
- organised and initiated the proceedings;
- gave all instructions to the solicitors in relation to the conduct of the proceedings;
- had the power to settle the claims (provided the settlement was not less than 75% of the amount claimed);
- agreed to pay all legal costs, any adverse costs orders and provided $1m in security; and
- would receive up to a third of any recoveries plus all costs awarded to the claimants.

3.10 Since *Fostif*, litigation funding as a means of improving access to justice has received broad acceptance by the courts in numerous decisions (including by the High Court in a subsequent decision on litigation funding,[14] in the approvals granted to litigation funders' fees in a number of funded class action settlement approvals in the Federal Court, and in court approvals granted to insolvency practitioners to enter into funding agreements), and by the Australian government and regulators.[15]

3.11 The Courts have also recognised the benefits a funder can bring to the efficient administration of justice. French J (as he then was) made this point when rejecting an argument that funding by IMF in the case before him was an abuse of the court's process:

> "*The development of arrangements under which the cost risk of complex commercial litigation can be spread is at least arguably an economic benefit if it supports the enforcement of legitimate claims. Where such arrangements involve the creation of budgets by funders knowledgeable in the costs of litigation it may inject a welcome element of commercial objectivity into the way in which such budgets are framed and the efficiency with which the litigation is conducted. The formulation of a budget limiting the amount of funding provided is, of course, different from the assumption by the funder of control of the conduct of the*

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[13] Idem.

[14] *Jeffrey & Katauskas Pty Ltd* v *SST Consulting Pty Ltd* (2009) 239 CLR 75.

[15] For a discussion of judicial decisions dealing with litigation funding, both pre – and post – *Fostif*, see D Grave, K Adams and J Betts, *Class Actions in Australia* (2nd ed, 2012), 803 – 816. IMF's funding of two settled class actions against Centro group companies and their auditors was approved by the Federal Court in *Kirby* v *Centro Properties Ltd (No 6)* [2012] FCA 650. See also the Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, "Government acts to ensure Access to Justice for Class Action Member" (Media Release, 4 May 2010), announcing the Government's decision to draft regulations clarifying that funded class actions are not managed investment schemes (thereby reversing the decision of the Full Federal Court in *Brookfield Multiplex Ltd* v *International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147). The Minister said: "There were serious concerns about impeding access to justice for small consumers, if access to funded class actions were to be subject to the same regulatory requirements as managed investment schemes under the *Corporations Act*."

> *litigation. The Court is in no position to pass definitive judgments on questions of the overall economic benefits to be derived from legitimate litigation funding arrangements. But the development of modern funding services in commercial litigation may be seen as indicative of a need in the market place to which those developments are legitimate responses. It is not for the Court to judge them as contrary to the public interest unless it be shown that a particular arrangement threatens to compromise the integrity of the Court's processes in some way.*"[16]

Regulation of Australian TPF

3.12 Until quite recently, litigation funders in Australia were unregulated, unless they chose to obtain an Australian Financial Services Licence.[17] In May 2010, the Minister announced that the government had decided to deliberately adopt a "light-touch" regulatory regime to encourage the development of litigation funding (particularly, funded class actions) as a means of improving access to justice. Regulation was to be limited to ensuring that funders had adequate arrangements in place to manage conflicts of interest. The Minister specifically noted:

> *"Importantly, I should add that there is little evidence of any consumer suffering losses, or encountering other problems, in the conduct of class actions. This has especially been the view of consumer groups in this field. For example, during the recent consultation process it became clear that there is no record of consumers complaining in significant numbers about class actions and the way they are conducted in Australia.*
>
> *It is clear that any Government intervention would need to be proportionate to the problem. Otherwise, we would risk placing an excessive burden on the [litigation funding] industry, and potentially impose barriers to entry; all to the detriment of Australian consumers."*[18]

3.13 In July 2013, the Corporations Amendment Regulation 2012 (No. 6) came into force ("**the Regulations**"). The Regulations apply to both single-party and multi-party litigation funding arrangements. They exempt a litigation funder from the need to hold an AFSL and require the funder to maintain, for the duration of any litigation it funds, "adequate practices for managing any conflict of interest that may arise" in relation to the funded litigation.[19] Failure to comply with the Regulations is a criminal offence and non-complying litigation funding agreements may be unenforceable.

3.14 The Australian Securities and Investments Commission ("**ASIC**") has published a comprehensive Regulatory Guide on the Regulations, which promotes the development of an extensive compliance regime for funders. In ASIC's view, a conflict may arise in funded litigation as a result of the *divergence of interests* between the funder, lawyers and claimants. This can arise because:

> *''The nature of arrangements between parties involved in a litigation scheme or a proof of debt scheme has the potential to lead to a divergence between the interests of the members and the interests of the funder and lawyers because:*

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[16] *QPSX Limited* v. *Ericsson Australia Pty Limited (No. 3)* [2005] FCA 933, [54].

[17] IMF held an AFSL between 2005 and 2012. As a result of changes in the law (particularly the High Court's decision in *International Litigation Partners Pte Ltd* v *Chameleon Mining NL (Receivers and Managers Appointed)* [2012] HCA 45) IMF applied to ASIC to have its AFSL cancelled. ASIC granted IMF's request on 18 April 2013.

[18] The Hon Chris Bowen MP, note 15, 7.

[19] The Regulations also exempt litigation funding schemes from the definition of "managed investment scheme" in the Corporations Act 2001 (C'th) and declare that they are not credit facilities (thereby exempting funders from the need to observe the National Credit Code). The regulations effectively reversed the decision of the High Court in *International Litigation Partners Pte Ltd v Chameleon Mining NL (Receivers and Managers Appointed)* [2012] HCA 45, which held the ligation funding arrangement in that case to be a "credit facility" and the Full Federal Court's decision in *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147, which held a funded class action to be an unregistered (and therefore unlawful) managed investment scheme.

(a) the funder has an interest in minimising the legal and administrative costs associated with the scheme and maximising their return;

(b) lawyers have an interest in receiving fees and costs associated with the provision of legal services; and

(c) the members have an interest in minimising the legal and administrative costs associated with the scheme, minimising the remuneration paid to the funder and maximising the amounts recovered from the defendant or insolvent company.

The divergence of interests may result in conflicts between the interests of the funder, lawyers and members. These conflicts of interest can be actual or potential, and present or future."[20]

3.15 ASIC's compliance scheme requires funders to develop their own conflicts management policies, as they are "best placed to know [their] own interests and where conflicts may arise" in the course of their business.[21] However, ASIC provides detailed suggestions on how funders might meet ASIC's expectations in complying with the Regulations.

4. The Australian Productivity Commission's inquiry into Access to Justice Arrangements

4.1. Australia's Productivity Commission is currently inquiring into Australia's civil justice system, with a focus on developing proposals for constraining costs and promoting access to justice and equality before the law. The Commission has published a draft report and has called for further submissions and public consultation before finalising its report to the federal government in September 2014.

4.2. The Commission is considering the private funding of litigation in Australia by third party litigation funders and lawyers. The Commission has proposed two key recommendations in this area:

DRAFT RECOMMENDATION 18.1

"Australian governments should remove restrictions on damages-based billing* [i.e. contingent fees] *subject to comprehensive disclosure requirements.

- ***The restrictions should be removed for most civil matters, with the prohibition on damages-based billing to remain for criminal and family matters, in line with restrictions for conditional billing."***

DRAFT RECOMMENDATION 18.2

"Third party litigation funding companies should be required to hold a financial services licence, be subject to capital adequacy requirements and be required to meet appropriate ethical and professional standards. Their financial conduct should be regulated by the Australian Securities and Investment Commission (ASIC), while their ethical conduct should be overseen by the courts.

Treasury and ASIC should work to identify the appropriate licence (either an Australian financial services licence or a separate licence category under the Corporations Act) within six months of the acceptance of this recommendation by the Commonwealth Government after consultation with relevant stakeholders."

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[20] Australian Securities and Investments Commission; *Litigation Schemes and Proof of Debt Schemes: Managing Conflicts of Interest*, Regulatory Guide 248 (2013) ("**RG**"), 248.11, 248.12. See Wayne Attrill, "The regulation of conflicts of interest in Australian litigation funding", (2013) J Civ Lit and Prac 193.

[21] RG 248.23, 248.25.

4.3. The Commission is reflecting on what restrictions should be imposed on contingent fee agreements to ensure adequate consumer protection. To this end, the Commission has requested further information, including on whether a limit on damages-based fees is necessary and, if so, what should this limit be and how should it be determined.

4.4. Overall, in its draft report the Commission has shown strong support for litigation funding as it has developed in Australia. It noted that it has not received any evidence that would lead it to believe that funding has the potential to promote frivolous litigation. The Commission considers that litigation funding can play an important role in promoting corporate accountability and it has expressed its support for the activities of litigation funders in facilitating class actions.

4.5. The Commission favours a licence regime for litigation funders, with the conditions to be determined following further consultation and compliance to be policed by the Australian Securities and Investments Commission ("**ASIC**"). While the Commission accepts that licensing and capital adequacy requirements could create barriers to entry to the litigation funding market, the Commission considers these are justified to ensure that only "reputable and capable funders" enter that market.

4.6. IMF welcomes the Commission's draft recommendation that funders be licensed - a position we have long advocated.

4.7. If you wish to read the full draft report of the Productivity Commission, please go to:

http://www.pc.gov.au/__data/assets/pdf_file/0008/135296/access-justice-draft.pdf.

IMF has made submissions to the Productivity Commission and these are available on IMF's website at:

http://www.imf.com.au/docs/default-source/site-documents/bentham-imf-limited's-submission-to-the-productivity-commission-inquiry-into-access-to-justice-arrangements

http://www.imf.com.au/docs/default-source/site-documents/bentham-imf-limiteds-response-to-productivity-commissions-draft-report .

PART B: CONCLUSION

5. Further Assistance

5.1. BEL is happy to answer any questions the Ministry of Security and Justice may have on this submission or provide any further assistance required by the Ministry. Please direct any questions or requests to John Walker (jwalker@benthameurope.com).

5.2. We thank the Ministry again for the opportunity to contribute our views on the Dutch Draft Bill in Redress of Mass Damages in a Collective Action.

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APPENDIX 1 – IMF CASE MANAGEMENT HISTORY (30 JUNE 2013)

Independent Auditor's Report to IMF (Australia) Ltd

We have reviewed the attached Statement of Completed Matters of IMF (Australia) Ltd for the period from 19 October 2001 to 30 June 2013 ("The Statement").

The Statement has been prepared for the Directors to assist the Directors in ensuring that the information disclosed in the Statement has been prepared in accordance with the notes to the Statement.

Management's Responsibility for the Statement

Management is responsible for the preparation of the Statement and has determined that the accounting policies used are appropriate to the needs of IMF (Australia) Ltd. Management is also responsible for such internal controls as management determines are necessary to enable the preparation of the Statement that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express a conclusion on the Statement based on our review. We have conducted our review in accordance with Standard on Review Engagements ASRE 2405 *Review of Historical Financial Information Other than a Financial Report* in order to state whether, on the basis of the procedures described, anything has come to our attention that causes us to believe that the Statement is not prepared, in all material respects, in accordance with the notes to the Statement. ASRE 2405 requires us to comply with the requirements of the applicable code of professional conduct of a professional accounting body.

A review consists of making enquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Australian Auditing Standards and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Conclusion

Based on our review, which is not an audit, nothing has come to our attention that causes us to believe that the Statement of Completed Matters of IMF (Australia) Ltd for the period from 19 October 2001 to 30 June 2013 is not prepared, in all material respects, in accordance with the notes to the Statement.

Ernst & Young
Perth
24 October 2013

Statement of Completed Matters

The following is a summary of all matters completed[1] by IMF (Australia) Ltd ("IMF") from 19 October 2001 to 30 June 2013.

Outcome	No of cases	% of total	Total income[2] generated from funded cases including cost recovery	Total costs recovered[3]	Total income[2] generated for funded clients	Total income[2] generated by IMF including cost recovery	Net income/(loss)[2] generated by IMF	Average funding duration in years
Settled	95	65%	1,117,789,096	114,976,353	758,935,766	358,853,330	243,876,977	2.53
Judgments - Won	14	9%	160,678,143	25,519,942	90,697,990	69,980,153	44,460,211	2.72
Judgments - Lost[4]	5	3%	-	-	-	-	(3,165,646)	2.35
Withdrawn[5]	35	23%	228,666	224,766	3,900	224,766	(4,118,560)	1.32
TOTAL PORTFOLIO	149	**100%**	**1,278,695,905**	**140,721,061**	**849,637,656**	**429,058,249**	**281,052,982**	**2.29**

NOTES TO THE STATEMENT OF COMPLETED MATTERS

1. A completed case is classified as being one where a funding agreement has been signed by a third party and IMF since 19 October 2001 and where IMF has no further funding liability.
2. Income/(loss) recognised from completed matters is calculated on the same basis as IMF's accounting policies as disclosed in the 30 June 2013 financial statements, except for the purposes of this table where it excludes internal overheads and capitalised interest.
3. "Total costs recovered" refers to the recovery of external costs only. It does not include internal overheads and capitalised interest.
4. "Court – Lost" refers to funded cases which were completed by a judgement and IMF's client was unsuccessful. No costs were recovered from these cases, however, costs including adverse costs paid to the winning side, of $3,165,646 were incurred by IMF.
5. "Withdrawn" refers to cases where IMF terminated the funding agreement with the client prior to the conclusion of the case. Total costs incurred in these cases were $4,343,326 before the recovery of $224,766.