



IMF (Australia) Ltd

**Combined Financial Services Guide and Product
Disclosure Statement**

Dated the 18th day of January 2010

1. **Introduction**

- 1.1 This document is provided to you by IMF (Australia) Ltd which is referred to as “IMF”, “us” or “we”.
- 1.2 It is provided to you pursuant to sections 941A and 1012B of the Corporations Act (“the Act”) because you have sought litigation funding services from us and is divided into the following two parts:
 - (a) a Financial Services Guide; and
 - (b) a Product Disclosure Statement.

2. **Financial Services Guide**

- 2.1 This guide is to help you decide whether to use our litigation funding services.
- 2.2 The guide is given to people who ask us to fund their claims and litigation. It explains:
 - (a) what money we might receive if you enter into a litigation funding agreement with us; and
 - (b) how you can complain about our service should you wish to do so.
- 2.3 We provide litigation funding services pursuant to written litigation funding agreements. If we decide to fund your claim, we will negotiate the terms of a written agreement with you.
- 2.4 Our litigation funding agreements are “financial products” as that term is used in the Act. For the purposes of the Act, if we offer to enter into a litigation funding agreement with you and you accept our offer, we:
 - (a) have “issued” a financial product to you; and
 - (b) are providing a “financial service” to you (as that term is used in the Act).
- 2.5 You are dealing with a company, IMF (Australia) Ltd, whose ABN is 45 067 298 088. Our shares are listed for quotation on the Australian Securities Exchange (“ASX”) under the stock code “IMF”. Our contact details are set out on the last page of this document. We also maintain a web site at www.imf.com.au.
- 2.6 Our web site contains the following information which may help you to decide whether to use our financial services:
 - (a) our audited accounts;
 - (b) our Corporate Governance Manual;
 - (c) our Privacy Policy;
 - (d) public announcements made by us to the ASX; and
 - (e) general information about litigation funding.
- 2.7 Our Chairman is Robert Ferguson and our Managing Director is Hugh McLernon. Both may be contacted by telephone on +61 2 8223 3567.
- 2.8 No other companies, entities or persons (other than our officers and employees) are involved in any way in the provision of our financial services.
- 2.9 A litigation funding agreement is a contract which both you and IMF may enforce.
- 2.10 We hold Australian Financial Services Licence No. 286906 and are lawfully entitled to enter into litigation funding agreements with retail and wholesale clients pursuant to the provisions of the Act and the conditions of that licence.

- 2.11 A copy of the licence will be made available to you upon request. A copy may also be sourced from our web site.
- 2.12 When we enter into litigation funding agreements, we are acting on our own behalf and not on behalf of you or anyone else. We cannot and do not make any recommendations as to whether you should enter into a litigation funding agreement with us. We will not provide you with any advice on the meaning, effect or content of the litigation funding agreement. Since we are the other party to the agreement, it would not be appropriate for us to provide you with such advice. We recommend that you obtain your own independent advice on the meaning, effect and content of the litigation funding agreement before you decide whether to execute it.
- 2.13 Once the litigation funding agreement is executed, you and IMF will have similar (but not the same) interests because we both stand to benefit from a successful resolution of your claim.
- 2.14 Our litigation funding agreements are entered into on a “no win, no fee” basis. This means that we will not be paid any money unless and until:
- (a) you have executed a litigation funding agreement;
 - (b) your claim has been settled or concluded by a judgment in your favour; and
 - (c) you have received at least some of the settlement or judgment moneys. (You will never be asked to pay more than you have actually received.)
- 2.15 The litigation funding agreement explains how any money we will be paid is calculated.
- 2.16 Clause 5 of our Corporate Governance Manual, which can be found on our website, explains how our dispute resolution process works.
- 2.17 IMF is also a member of the Financial Ombudsman Service scheme. You can contact the Chief Ombudsman, Colin Neave AM, by ringing 1300 780 808 (within Australia) or +61 3 9613 7333 (outside Australia) or by sending a fax to +61 3 9613 7345.

3. Product Disclosure Statement

- 3.1 We have prepared this Product Disclosure Statement.
- 3.2 In general terms, we will decide whether we want to enter into a litigation funding agreement with you by assessing:
- (a) the strength of your claim;
 - (b) the type of claim;
 - (c) when your claim arose;
 - (d) the jurisdiction in which your claim will be heard;
 - (e) the amount of your claim;
 - (f) any legal or factual difficulties;
 - (g) the ability of the proposed defendant to pay you if you are successful; and
 - (h) how much documentary evidence there is to support your claim.
- 3.3 To assist us in making our initial assessment, we may require you to provide us with documents and other information. We will treat this information as confidential.
- 3.4 We do not charge anything for our initial assessment.
- 3.5 If we decide not to fund your claim, we will return your documents to you promptly.
- 3.6 If we decide to fund your claim, we will offer to enter into a litigation funding agreement with you.
- 3.7 The litigation funding agreement will cover three major areas:
- (a) investigation;

- (b) litigation management; and
 - (c) funding.
- 3.8 If we enter into a litigation funding agreement with you, we will continue to investigate your claim.
- 3.9 We will appoint the solicitors to provide the relevant legal work to you on the terms of an agreement, referred to as the Standard Lawyers Terms. This is an agreement between us and the solicitors. The solicitors will also wish to have a retainer agreement directly with you.
- 3.10 We will pay the following costs: - incurred during the term of the funding agreement
 - (a) the reasonable legal fees of prosecuting the relevant proceedings;
 - (b) expenses reasonably incurred by the solicitors including counsel's fees and expert fees ;
 - (c) court costs;
 - (d) out of pocket expenses associated with our investigation and project management; and
 - (e) any costs of the other side that are ordered to be paid.
- 3.11 We will pay the costs charged by the solicitors, as agreed. We will seek reimbursement from you of the costs we pay, but only from any recoveries you obtain from any settlement or judgement in the proceedings. If you do not win your litigation and receive payment from the other side then you will have nothing to pay to IMF.
- 3.12 We will also provide any other non-legal assistance which you or your solicitors may reasonably request.
- 3.13 If, in any litigation, you are required to provide security for the other side's legal costs, we will provide that security on your behalf by:
 - (a) paying money into court or providing a bank guarantee if required to do so by order of the court;
 - (b) providing our guarantee to the defendant or to the court; or
 - (c) providing a Deed Poll to the other side and to the Court undertaking to be directly liable for all of the costs.
- 3.14 We will provide the solicitors with their day to day instructions. However you can override our instructions if you wish and in the event of any conflict arising between your interests and those of IMF, your interests are to prevail. In the case of funding agreements with insolvency practitioners, instructions to the solicitors are given by the insolvency practitioner, although we may assist in that respect.
- 3.15 If your claim is unsuccessful and you are ordered to pay the other side's costs, we will pay those costs on your behalf. If your claim is settled or successfully concluded by judgment in your favour, we will be entitled to receive from any recovery:
 - (a) repayment of all money we have paid on your behalf;
 - (b) a project management fee; and
 - (c) an agreed percentage of your recovery.
- 3.16 The litigation funding agreement provides for any recoveries in respect of your claim to be paid into the solicitor's trust account and to be distributed to IMF in respect of its entitlements referred to above (with the balance available to you, subject to any other obligations you may have).
- 3.17 We will not charge for any non-financial assistance we provide to you during the course of any litigation other than our project management fee.

- 3.18 Except where you are suing in the same legal proceedings with others (being multi party cases, including class actions referred to in paragraph 7 below), only you can decide whether to settle your claim. We may, however, ask you to obtain senior counsel's opinion on any settlement offer with the opinion being binding on you and us (except in the case of funding agreements with insolvency practitioners). We will pay for that opinion. In multiparty cases there are specific clauses in the funding agreement that deal with the circumstances in which you can be bound by a global settlement. In addition, with respect to class actions, there are court rules that deal with settlement.
- 3.19 After you execute a litigation funding agreement, you will have a 21 day "cooling off" period. During that period you may tell us that you wish to terminate the litigation funding agreement. You may tell us by letter, email or fax.
- 3.20 If you decide to terminate the litigation funding agreement during that period, we will not charge you anything.
- 3.21 After the 21 day "cooling off" period has ended, you will only be able to terminate the litigation funding agreement in accordance with its terms.
- 3.22 We may terminate the litigation funding agreement at any time by giving you 7 days written notice.
- 3.23 If you enter into a litigation funding agreement and your claim goes to trial, you may be required to give evidence in court. You may also be required to provide copies of all your relevant documents to the other side. We do not pay you to give evidence, to gather and supply your documents to your solicitors or to help with the case generally.
- 3.24 If other people have the same or similar claims as you, we may decide to fund their claims too. This may mean that you and they become claimants in the same litigation or that you become a representative party or are represented by another (usually in a class action). You will not become a representative party without your written consent. Multiparty litigation is referred to in paragraph 7 below.

4. Risks

- 4.1 The most obvious risk is that you may commence litigation and lose. If that happens, and subject to paragraph 4.4, you will not be required to pay any money. You will, however, lose the time and effort you have put into the litigation.
- 4.2 Even if you are successful with your litigation, the other side may not be able to pay all of the judgment sum. As we only get paid from any money you actually obtain, we are always careful to investigate whether the other side will be able to pay you. Of course, we can never guarantee that they will have enough money to do so.
- 4.3 As explained in paragraph 3.22, we may terminate the litigation funding agreement. If that happens, we may lose all the money we have paid and will receive nothing for any work we have put into your claim. If we terminate the litigation funding agreement and you later receive some money in respect of your claim, you must still reimburse us from that money for the legal and other expenses we have paid on your behalf. Extremely few litigation funding agreements are terminated by us.
- 4.4 As your claim proceeds, we will pay your legal costs, court costs and other funded expenses on a monthly basis. As a company, however, we could become insolvent and be unable to meet any order that you pay the other side's legal costs. You will need to make your own assessment of our financial position. Audited accounts of the company are contained on our web site.
- 4.5 We are not aware of any taxation implications for you if you enter into a litigation funding agreement with us. You should obtain your own independent taxation advice in this regard.

5. Dispute Resolution

- 5.1 If you are unhappy with any part of our service, please see Clause 5 of the Corporate Governance Manual which can be found on our web site. That clause explains our internal complaint resolution procedure.

- 5.2 If you have a complaint, you should raise it first with the investment manager who has been responsible for your litigation funding agreement. Any complaints will then be dealt with in accordance with the procedure set out in Clause 5.
- 5.3 If we cannot resolve your complaint ourselves, you can use the external dispute resolution procedure provided by the Financial Ombudsman Service - see paragraph 2.17 above.
- 5.4 Your complaints will be dealt with by the Ombudsman at no cost to you.
- 5.5 This Product Disclosure Statement has been provided by us because we may offer to enter into a litigation funding agreement with you. Our contact details are:

IMF (Australia) Ltd
Level 5, 32 Martin Place
SYDNEY NSW 2000

Attention: Diane Jones

Tel: +61 2 8223 3567

Fax: +61 2 8223 3555

Email: djones@imf.com.au

6. Privacy

- 6.1 Our privacy policy can be found on our website. IMF will adhere to that policy
- 6.2 From time to time we will make contact with you regarding this and other Litigation in which you are, or may wish to become, involved.

7. Multi-Party Litigation

- 7.1 From time to time IMF funds more than one person with the same or similar claims. The cases may be funded as representative actions (otherwise known as class actions) or as a group action.
- 7.2 In class actions, hundreds of clients and sometimes thousands of clients are joined into the one set of proceedings. Such class actions may include persons who have not entered into a funding agreement with IMF.
- 7.3 Common questions of law or fact are answered for the benefit of all members of the class and then, in a secondary set of proceedings, the separate claim of each client is determined (if there is no earlier settlement).
- 7.4 The costs in these matters are paid by IMF and any recoupment from settlement or judgement is divided between the clients on a pro rata basis according to the size of their claim.
- 7.5 In this way, if the legal costs paid by IMF in a class action are say \$4M and a clients claim represents say 1 % of the total claim, then the amount deducted from the payment to that client in respect of their share of the costs is \$40,000.
- 7.6 The solicitors acting in the class action determine the size of each clients claim for the purposes of determining the costs to be reimbursed to IMF by each client.
- 7.7 Because of the large number of class members it is not possible to permit each client to appoint solicitors. In these class actions there is one set of solicitors appointed for all members of the class.
- 7.8 Generally, only the representative party will be required to provide documentation and to give evidence during the course of the initial part of the proceedings (i.e. where the common questions are answered by the Court). If the matter is not settled (and most cases are settled at that point) then it may be necessary for all clients to provide discovery of their documentation and to give evidence on their own particular matter. All clients are expected to provide material to establish the amount of their loss for the purpose of settlement.

- 7.9 If there is a lump sum settlement of the class action then the distribution to each client is determined on a pro rata basis depending on the size of their claim. Settlement of class actions can only occur with the consent of the Court.
- 7.10 You may be given the opportunity to opt out of a class action in which you are either the representative or are represented, with the consequence that you are no longer included in the action. If you opt out, the litigation funding agreement provides that you will still be obliged to pay to IMF its entitlements, from any recovery you make in respect of your claims that were included in the class action. If you do not make any recovery then you will have no obligation to pay anything to IMF.
- 7.11 As is usually the case in class actions, control of the proceedings is in the hands of the representative, the solicitors and IMF. Control of the second part of the proceedings is in the hands of each individual client and the solicitors.
- 7.12 Because of the expense involved in class actions, funding will not occur unless sufficient numbers agree to become members of the class.
- 7.13 In addition class actions may be managed investment schemes under the Corporations Act and may require registration.
- 7.14 No matter, which is a Managed Investment Scheme, will proceed unless IMF and the solicitors involved receive an exemption from ASIC under the Corporations Act permitting the Managed Investment Scheme to go forward without registration or the Corporations Act and/or the regulations made there under are amended to remove the necessity for such registration.

8. Group Actions

- 8.1 In some cases large groups of clients are joined together in what is known as a group action where each client is a party to the proceedings.
- 8.2 This type of proceeding has the advantage that all questions of liability and damage are answered in the one hearing.
- 8.3 In group actions, all clients will be required to provide documentation and to give evidence relating to their claim.
- 8.4 In group actions IMF pays all legal costs and pays the defendant's costs if the action is not successful, incurred during the term of the funding agreement.
- 8.5 The points made in paragraph 7.11 to 7.13 above also apply to group actions.
- 8.6 In group actions a committee of clients may be formed to make decisions on behalf of all clients in respect of the day to day conduct of the case.

Dated the 18th day of January 2010