



Receivers' Six Monthly Report on the State of Affairs of  
Capital + Merchant Finance Limited (In Receivership and In Liquidation)  
For the six month period from 24 November 2009 to 23 May 2010  
Pursuant to Section 24 of the Receiverships Act 1993  
Company Number 1180423

June 2010



30 June 2010

Registrar of Companies  
Companies Office  
Private Bag 92061  
Auckland Mail Centre  
Auckland

Capital + Merchant Finance Limited (In Receivership and In Liquidation)

Attached is our six monthly report in relation to Capital + Merchant Finance Limited (In Receivership) pursuant to Section 24 of the Receiverships Act 1993. A copy of this report has been sent to Fortress Credit Corporation (Australia) II Pty Limited and Perpetual Trust Limited.

A handwritten signature in blue ink, appearing to read "R G Simpson".

R G Simpson  
Receiver

A handwritten signature in blue ink, appearing to read "T W Downes".

T W Downes  
Receiver

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# Introduction

We, Richard Grant Simpson and Timothy Wilson Downes of Grant Thornton were appointed jointly and severally as receivers and managers of all the assets, property and undertakings of Capital + Merchant Finance Limited ("Capital + Merchant Finance" or "the Company") on 23 November 2007 by Fortress Credit Corporation (Australia) II Pty Limited ("Fortress").

We set out below our six monthly report on the state of the affairs of the Company as required by section 24 of the Receiverships Act 1993.

The Official Assignee at Hamilton was appointed Liquidator of the Company on 15 December 2009.

## Particulars of Assets and Disposals of Receivership Property

### Loans and Advances

The Company's major asset was the loans and advances, which consisted of 55 loans with a total book value of \$182.6 million.

The table below summarises the priority position of the loans, including the number with first, second or third ranking mortgages, or other securities, along with our realisations to date.

Loan Book	As at 23 Nov 2007 \$000's	Realised To date \$000's
1st Mortgage	1,487	104
2nd/3rd Mortgage	42,269	37,155
Business Loans	13,761	9,760
Related Party Loans & Subsidiary	41,581	18,875
DMT	18,474	121
CMI	65,026	-
Total	<u>182,597</u>	<u>66,014</u>
Paid or Payable to Prior Ranking Securities		\$41,616
Total Recoveries to Capital + Merchant Finance		<u>24,398</u>

Realisations of all loans have now been completed. In the case of a small number of loans, we are continuing our efforts to recover monies under the Lloyds insurance policy, as well as pursuing loan guarantees where possible.

From the 55 Loans, gross recoveries of approximately \$66 million had been realised as at 23 May 2010. Of this, \$24.4 million (excluding collection costs) has been recovered by Capital + Merchant Finance, the balance having been paid to prior ranking security holders.

### Insurance Policies Held

As at the date of receivership, Capital + Merchant Finance held an insurance policy in respect of 42 loans, covering amounts of unrecovered principal.

We have taken legal and specialist insurance advice on this matter and confirm that of the 42 loans, the 16 included with CMI are not covered by the insurance policy.

We are hopeful that there may be coverage in relation to 12 loans included with DMT.

A claim has been lodged for the remaining 8 loans and they are still being reviewed to confirm adherence by Capital + Merchant Finance for disclosure and other requirements of the insurance policy. To date, one of these claims has been rejected and none have been accepted.

The insurance policy covers a percentage of unrecovered principal, up to a maximum for each loan of \$3.5 million, with an overall maximum claimable within a twelve month period of \$20 million.

In pursuing this matter with the underwriter, we are experiencing difficulty with a number of loans where technical policy requirements were not adhered to, prior to the date of receivership and this may further invalidate the insurance position. However, we are continuing to pursue this matter and cannot reliably estimate expected recoveries (if any) at this time.

A refund of \$268k has been recovered for the premiums paid in relation to CMI loans. We are continuing to pursue the insurance brokers with regards to refunds of commission paid and the underwriters for further premium refunds. In this regard an application to court for summary judgement has been made with a hearing date set for 15 July 2010.

#### Other Investments

Other investments include \$4.7 million invested in DMT A, B and C capital notes totalling \$3.2 million and a \$1.5 million security deposit.

The notes and the security deposit were repayable on 31 December 2008. This date was extended. Currently portions of class A and B notes have been paid, with full recovery dependent on DMT successfully claiming insurance on defaulted loans.

CMF's C notes rank behind the A and B notes, and these will only be paid out after the full redemption of A and B notes. DMT have indicated recoveries on these are unlikely.

To date we have received \$554k in interest payments.

#### Taxation

Capital + Merchant Finance's accounts show a tax liability of \$196k as at 23 November 2007.

This figure includes deferred tax liabilities, which when removed for the preparation of the 2007 tax return results in a tax asset of \$219k.

However, any tax claim is limited to the amount available in the Imputation Credit Account. After taking into account the dividends paid to Capital + Merchant Group Limited during the period 1 April 2007 to 23 November 2007 the imputation account and in turn the tax refund is reduced by \$172k.

After liaising with Inland Revenue, we achieved a refund of \$30k.

The IRD has conducted a further audit with regards to the Imputation Account balance, and advised that due to a change of the ultimate shareholder the Imputation Account reduces to Nil.

Discussions with the IRD are ongoing on this matter.

## Particulars of Debts and Liabilities Outstanding

### Fortress

Fortress is secured by a General Security Agreement dated 5 October 2006 and a Deed of Priority between Capital + Merchant Finance, Perpetual Trust Limited and Fortress dated 5 October 2006.

To date we have repaid Fortress \$21.2 million. Fortress is owed a further \$2.32 million, including accrued interest, as at 23 May 2010.

Based upon the information available, we expect Fortress will be repaid in full.

### Debenture Holders

Debentures comprise:

- Capital Secured Debentures \$90.7 million
- Investment Debentures \$76.3 million

### Estimated Return to Debenture Holders

Our initial estimate was that debenture holders may recover between 14% and 59% of their investment over time. This preliminary estimated range reflected considerable risks and uncertainties relating to the recoverability of certain loans.

Unfortunately the loan quality, the deteriorating property market and lack of alternative credit to facilitate refinancing options have had an adverse effect on our ability to recover outstanding loans and assets.

As a consequence we revised our estimate of recoveries to debenture holders to a recovery of up to 2% of their investment, prior to interest accrued on the first chargeholder's debt and receivership costs. After accrued interest and receivership costs we expect recoveries to be \$nil for debenture holders from the assets of the company. In our view, the only recoveries for debenture holders will be from insurance claims and any legal claims against various parties.

### Summary of Receivership Recoveries

From the Capital + Merchant Finance and CMI (Capital + Merchant Investments) receiverships combined, we have realised \$96.1 million to date from the companies' assets. Following this, we have paid chargeholders \$87.3 million, made up of:

	\$M
Fortress	61.4
Other prior Chargeholders	25.9
Total	87.3

If Fortress was included on the same priority ranking as the public debenture holders, the recoveries paid to investors in Capital + Merchant as a percentage of total debt is 26 cents in the dollar.

## Receipts and Payments

The table opposite sets out the receipts and payments for the Company from 24 November 2009 to 23 May 2010.

We note the following in respect of the receipts and payments summarised in the table:

- From the 55 Loans, gross recoveries of approximately \$65.8 million had been realised as at 23 May 2010, with \$210k being realised in the last six months. Of this \$21.2 million has been repaid to Fortress.
- Legal fees to date include general receivership advice, insurance advance, loan specific advice and property administration.
- Sundry expenses relate to document storage costs.

Capital + Merchant Finance Limited (In Receivership)	
Receivers' Receipts & Payments	
For the Period: 24-Nov-09 to 23-May-10	\$000's
Receipts	
Balance brought forward	51,611
Loan Settlements	210
GST Refunds	14
<b>Total Receipts</b>	<b>51,835</b>
Payments	
Balance brought forward	51,376
GST Recoverable	16
GST Irrecoverable	5
Legal Fees & Disbursements	48
Receivers Fees & Disbursements	119
Sundry Expenses	16
Advance to CMI	224
<b>Total Payments</b>	<b>51,804</b>
<b>Net Funds on Hand</b>	<b>31</b>

## Investigations

The Securities Commission have laid charges against the directors of CMF; the court process will take its course in this regard.

The SFO is continuing its investigations into potential actions against certain of the current and previous directors namely Neal Nicholls, Owen Tallentire, Colin Ryan, Robert Sutherland and Wayne Douglas.

The Official Assignee is also investigating as to whether there are any actions that they may wish to pursue.

An investor is taking an action against Perpetual and CMF.

# Appendix 1

## Restrictions

All information contained in this report is provided in accordance with Sections 25 and 26 of the Receiverships Act 1993.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon by us is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

We have not independently verified the accuracy of the information provided to us, and have not conducted any form of audit in respect of the company. We express no opinion on the reliability, accuracy or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.

The statements and opinions expressed in this report are based on information available and assumptions made as at the date of this report. It is possible that actual outcomes may be significantly different from those disclosed in this report.

We reserve the right, but will be under no obligation, to review or amend our report, as additional information becomes available.

In addition the following should be noted:

- Certain values included in tables in this report have been rounded and therefore may not add exactly.
- All amounts are stated in New Zealand dollars.

## Appendix 2

### Directory

Capital + Merchant Finance	Capital + Merchant Finance Limited (In Receivership)
CMI:	Capital + Merchant Investments Limited (In Receivership)
DMT:	Diversified Mortgage Trust No 1 Limited
Fortress:	Fortress Credit Corporation (Australia) II Pty Limited, Level 43, 50 Bridge Street, Sydney, NSW 2000, Australia
Perpetual	Perpetual Trust Limited, Level 1 Pyne Gould Corporation Building, 233 Cambridge Terrace, Christchurch
Receivers:	Richard Simpson and Timothy Downes of Grant Thornton
Second Receivers:	Grant Graham and Brendan Gibson of Korda Mentha