

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8792/13

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE FOR THE LM MANAGED PERFORMANCE
FUND**

AND

First Defendant: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION)
ACN 077 208 461**

AND

Second Defendant: **THE TRUST COMPANY (PTAL) LIMITED
ACN 008 412 913**

APPLICATION

TAKE NOTICE that KordaMentha Pty Ltd (ACN 100 169 391) as trustee of the LM Managed Performance Fund ("Applicant") is applying to the Court for the following orders:

1. Pursuant to section 96 (2) of the *Trusts Act* 1973 (Qld), Rules 116 and 367 of the *Uniform Civil Procedure Rules* 1999 (Qld) and this Honourable Court's inherent jurisdiction, service of the plaintiff/applicant's proposed application for directions under section 96 (1) the *Trusts Act* 1973 (Qld), and the material in support of that application, be served upon the unitholders of the LM Managed Performance Fund ("MPF") as follows:
 - (a) by 4pm on 11 November 2015, the applicant is to email to the MPF unit holders a notice informing them that the applicant has applied ("S 96 Application") to this Honourable Court for directions under section 96

APPLICATION

Filed on behalf of the Applicant

Form 9 Rules 31

MINTER ELLISON

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Reference NYB DOB 40-7744031

(1) of the *Trusts Act 1973* (Qld) as to whether to settle this proceeding as against both defendant/respondents, and that the unitholders may view all substantive Court documents upon which the applicant intends to rely in support of its S 96 Application on the website the address of which is:

<http://www.kordamentha.com/creditor-information/australia/109>

("Website")

- (b) Before sending the emails referred to in paragraph 1(a), the applicant is to upload to the Website, copies of:
- (i) this application;
 - (ii) the affidavit of Jarrod Villani filed (including all the exhibits) in support of this application;
 - (iii) the order made in respect of this application;
 - (iv) the S 96 Application;
 - (v) the Statement of Facts drawn pursuant to section 96 (1) of the *Trusts Act 1973* (Qld); and
 - (vi) the substantive affidavits (including all the exhibits) that the applicant intends to rely upon in support of its S 96 Application.
- (c) Where the applicant receives a response to an email that indicates the email was not received and the applicant has a postal address for any relevant MPF unitholder or unitholders, the applicant is to post the email to the postal address of the MPF unitholder.
- (d) The applicant is not required to take further steps to serve MPF unitholders whose email addresses return permanent undeliverable receipts and for which the applicant does not have a postal address.

2. Service of the S 96 Application be deemed to be effective on each of the MPF unitholders as of 18 November 2015.
3. Where the applicant proposes to rely on further material in support of its S 96 Application, it may serve that material by uploading the material to the Website, sending letters to a postal address to unitholders to whom order 1(c) applies, and

otherwise by email to the unitholders notifying them that further material has been added to the website.

4. The Applicant's costs and expenses of and incidental to this application be paid on the indemnity basis out of the MPF.
5. Such further and other orders or directions as this Honourable Court deems appropriate.

This application will be heard by the Court at Brisbane
on: Thursday, 5 November 2015 at 9.30 am.

Filed in the Brisbane Registry on: 5 November 2015

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.

On the hearing of the application the applicant intends to rely on the following affidavits and documents:

1. Affidavit of Jarrod Villani sworn on 4 November 2015, to be filed by leave on 5 November 2015.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 15 MINS

Signed:



Description: MINTER ELLISON
Solicitors for the Applicant

Dated: 5 November 2015

This application is not intended to be served on the defendants.