

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant:

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

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. In respect of the application filed on 4 May 2018 for directions under section 96 of the *Trusts Act* 1973 (Qld), the applicant serve by email all unitholders of the Managed Performance Fund ("MPF") for whom the applicant has an email address.
2. Where the applicant receives a response to an email that indicates the email was not received and the applicant has a postal address for that MPF unitholder, the applicant is to post the email to the postal address of the MPF unitholder.
3. By 4.00pm on 17 May 2018, the applicant is to email to the MPF unitholders a notice informing them that the applicant has applied ("**S 96 Application**") to this Honourable Court for directions under section 96 of the *Trusts Act* 1973 (Qld) to discontinue Supreme Court Proceedings S8032/14 and S8034/14 against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461), and Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund, and that they may view all substantive Court documents upon which the applicant



Form 9 Rules 31

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intends to rely in support of its S 96 Application on the web-site whose address is:
<http://www.kordamentha.com/creditor-information/australia/109> (“Website”).

4. By 4.00pm on 17 May 2018, the applicant is to upload to the Website, copies of:
 - (a) the S 96 Application;
 - (b) this application for directions about service;
 - (c) the affidavit of Jarrod Villani to be filed in support of the application for directions about service;
 - (d) the service order;
 - (e) the Statement or Statements of Facts drawn pursuant to section 96 (1) of the *Trusts Act* 1973 (Qld); and
 - (f) the substantive affidavits (including all the exhibits) that the applicant intends to reply upon in support of its S 96 Application.
5. Service in accordance with paragraph 4 of this order be deemed to be effective on each of the MPF unitholders as of 24 May 2018.
6. For all other emails by way of service on the MPF unitholders:
 - (a) the email shall, where appropriate, notify the unitholder of the further document or documents that has been uploaded to the Website;
 - (b) service shall be deemed to have been effected two business days after the day on which the email was sent.
7. The applicant is not required to take further steps to serve MPF unitholders whose email addresses return permanent undeliverable receipts and for which the Trustee does not have a postal address.
8. The applicant's cost and expenses of and incidental to its application for this order be paid on the indemnity basis out of the MPF.
9. The applicant is to serve a copy of this order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) and Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund.

This application will be heard by the Court at Brisbane
on: Wednesday, 9 May 2018 at 10.00 am.

Filed on 4 May 2018



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 to be sworn and filed.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 30
Minutes

Signed:

Description: MINTER ELLISON
Solicitors for the Applicant

Dated: 4 May 2018

This application is not intended to be served on any person.

Notice of this application will be given to:

The first defendant in Supreme Court of Queensland proceedings numbered 8032/14 and 8034/14, LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

AND TO

The second defendant, in Supreme Court of Queensland proceedings numbered 8032/14 and 8034/14 Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund