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**

SECOND STATEMENT OF FACTS OF THE APPLICANT

FILED PURSUANT TO SECTION 96(1) OF THE TRUSTS ACT 1973 (Qld)

FOR S8034/14 – THE SECOND PROCEEDING

Introduction

1. This is the second statement of facts for the Second Proceeding.

2. In this second statement of facts for the Second Proceeding, the Trustee:

   (a) adopts the same definitions used in the second statement of facts for the First Proceeding unless a contrary intention is expressed;

   (b) does not annex the documents already annexed to the first and second statement of facts in the First Proceeding;

   (c) does not repeat all of the facts or issues common to the Proceedings that have already been stated or addressed in the second statement of facts for the First Proceeding.

3. The third amended statement of claim filed on 19 April 2016, is the Trustees' current statement of claim in the Second Proceeding.

4. The second statement of facts for the Second Proceeding is prepared in support of the Second Section 96 Application, in which the Trustee seeks a direction as to whether it would be justified in discontinuing the Proceedings.

Service of the Second Section 96 Application

5. Service of the Second Section 96 Application is addressed in the second statement of facts for the First Proceeding.

The First Section 96 Application

6. The facts and issues relevant to the Second Proceeding from the First Section 96 Application are addressed in the second statement of facts for the First Proceeding.

7. Annexure 1 to the second statement of facts in the Second Proceeding is a true copy of the Deed Poll dated 8 September 2015 and filed in the Second Proceeding.

Current litigation relevant to the Trustee

8. The current litigation relevant to the Trustee in relation to the Second Proceeding is addressed in the second statement of facts for the First Proceeding.

Material events since the Order was made

9. The material events for the Second Proceeding are addressed in in the second statement of facts for the First Proceeding.

Estimated Value of the MPF

10. The facts and issues relevant to the estimated value of the MPF are addressed in in the second statement of facts for the First Proceeding.

Estimated value of the assets of LMIM and the FMIF

11. The facts and issues relevant to the estimated value of the assets of LMIM and the FMIF are addressed in in the second statement of facts for the First Proceeding.

Financial inability to fund the Second Proceeding

12. The facts and issues relevant to the Trustee's inability to fund the Second Proceedings are addressed in in the second statement of facts for the First Proceeding.

The Trustee's opinion regarding the discontinuance

13. In all of the circumstances identified in the second statement of facts for each of the Proceedings, Trustee is of the opinion that it is in the best interests of the unitholders of the MPF for the Second Proceeding to be discontinued.

Attitude of unitholders of the MPF

14. The Trustee does not yet know the attitude of any unitholders of the MPF to the Second Section 96 Application.

15. The Trustee will bring to the attention of this Honourable Court the attitude of any unitholders of the MPF who communicate with the Trustee in that respect.

17 May 2018

Annexure 1

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8034/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR CAPACITY AS TRUSTEES OF THE LM MANAGED PERFORMANCE FUND**

AND

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

DEED POLL

DEED POLL

Filed on behalf of the plaintiff

Form 1

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DEED POLL

PARTY	NAME	IMF BENTHAM LIMITED ("IMF")
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	ATTENTION	DIANE JONES
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DEFINITIONS

ADVERSE COST ORDER	Means any costs order made in favour of the Respondent against the Applicant in the Proceedings in respect of costs incurred during the term of the LFA.
APPLICANT	KordaMentha Pty Ltd
COURT	The Court where the Proceedings are conducted.
LFA	The litigation funding agreement which commenced on 4 September 2015 between IMF and the Applicant.
PROCEEDINGS	Supreme Court of Queensland Proceeding No. 8034/14
RESPONDENT	LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461)
GOVERNING LAW	The law of Queensland.

BY THIS DEED POLL, IMF, for the benefit of the Court and the Respondent:

(a) submits to the jurisdiction of the Court in relation to any order the Court may wish to make directly against IMF in the Proceedings that IMF pay any Adverse Costs Order;

(b) agrees not to oppose any joinder application made by the Respondent in the Proceedings for the purpose of seeking an order that IMF pay any Adverse Cost Order, and agrees, in circumstances where the rules of the Court prevent that joinder, at the Respondent's request, to itself apply to be joined to the Proceedings, to enable such an order to be made against it;

(c) agrees to pay to the Respondent the final, quantified amount of any Adverse Cost Order such that the Respondent may enforce the payment of that amount as a debt due and owing by IMF to the Respondent;

(d) agrees to notify the Respondent in writing of any termination of the LFA within 7 days of it so terminating; and

(e) acknowledges having received valuable consideration for this Deed Poll.

DATED this the 8th day of September 2015.

Executed as a Deed Poll
By IMF Bentham Limited

Director

Director (Secretary)

Annexure 1