

SUPREME COURT OF QUEENSLAND

REGISTRY      Brisbane  
NUMBER        12716/15

Plaintiff:                    **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS  
CAPACITY AS TRUSTEE OF THE LM MANAGED  
PERFORMANCE FUND**

AND

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

**APPLICATION**

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

1. In respect of the application filed on 4 July 2018 for directions under section 96 of the *Trusts Act* 1973 (Qld), the plaintiff serve by email all unitholders of the Managed Performance Fund ("MPF") for whom the plaintiff has an email address.
2. Where the plaintiff receives a response to an email that indicates the email was not received and the plaintiff has a postal address for that MPF unitholder, the plaintiff is to post the email to the postal address of the MPF unitholder.
3. By 4.00pm on 17 July 2018, the plaintiff is to email to the MPF unitholders a notice informing them that the plaintiff has applied ("**S 96 Application**") to this Honourable Court for directions under section 96 of the *Trusts Act* 1973 (Qld) to discontinue the proceeding, and that they may view all substantive Court documents upon which the plaintiff intends to rely in support of its S 96



APPLICATION

Filed on behalf of the Applicant

Form 9 Rules 31

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MINTER ELLISON  
Waterfront Place  
1 Eagle Street  
BRISBANE QLD 4000  
DX 102 BRISBANE  
Telephone (07) 3119 6000  
Facsimile (07) 3119 1000  
Email: david.o'brien@minterellison.com  
Reference NYB DOB 407747963

Application on the web-site whose address is:

<http://www.kordamentha.com/creditor-information/australia/109> (“Website”).

4. By 4.00pm on 17 July 2018, the plaintiff 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 of Facts drawn pursuant to section 96 (1) of the *Trusts Act* 1973 (Qld); and
  - (f) any substantive affidavits (including all the exhibits) that the plaintiff intends to rely 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 July 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 plaintiff 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 plaintiff's costs and expenses of and incidental to its application for this order be paid on the indemnity basis out of the MPF.
9. The plaintiff 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: Thursday, <sup>16</sup>~~10~~ July 2018 at 10.00 am.

Filed on 5 July 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 plaintiff intends to rely on the following affidavits and documents:

1. Affidavit of Jarrod Villani to be sworn and filed.
2. Affidavit of David Thomas O'Brien to be sworn and filed.

THE PLAINTIFF ESTIMATES THE HEARING SHOULD BE ALLOCATED 30  
 Minutes

Signed:

Description: MINTER ELLISON  
 Solicitors for the Plaintiff

Dated: 5 July 2018

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

Notice of this application will be given to:

The defendant, LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

AND TO

Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund