

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 11917 of 2015

APPLICANT **KORDAMENTHA PTY LTD (ACN 100
169 391) AS TRUSTEE FOR THE LM
MANAGED PERFORMANCE FUND**
AND
RESPONDENT **THE MEMBERS OF THE LM
MANAGED PERFORMANCE FUND**
AND

APPLICATION

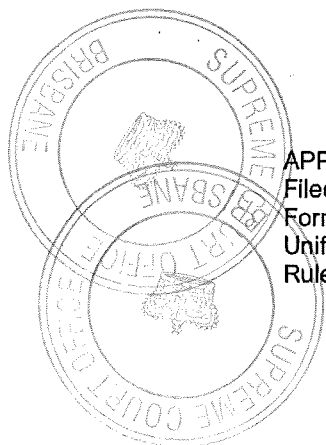
TAKE NOTICE that the Applicant is applying to the Court for the following orders:

Directions sought pursuant to s.96 of the *Trusts Act 1973* (Qld)

- 1 An order pursuant to s.96 of the *Trusts Act 1973* (Qld), or alternatively in the inherent jurisdiction of the Court, that the Applicant is justified in:
 - (a) when making the final distribution of the net proceeds of the assets to the unitholders of the LM Managed Performance Fund, identifying the unitholders to whom the Trustee will not be able to pay a final distribution payment, due to the Trustee holding insufficient bank account details for such unitholders;
 - (b) after processing the final distribution payment, identifying any unitholders whose distribution payments were unsuccessful, or whose payments have been returned by the recipient bank; and
 - (c) paying the distribution payments payable to the unitholders referred to in subparagraphs (a) and (b):
 - i. to the Public Trustee of Queensland as unclaimed monies,

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Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

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Level 12, 60 Martin Place
Sydney NSW 2000
Phone No: (02) 8076 8090



pursuant to s.102 of the *Public Trustee Act 1978* (Qld); or

- ii. in the alternative, to the Registrar of the Supreme Court of Queensland, pursuant to s.102 of the *Trusts Act 1973* (Qld) and s.4 of the *Court Funds Regulation 2009* (Qld).

Confidentiality orders

- 2 An order that the exhibit marked "Confidential Exhibit SC-18" containing to the affidavit of Stacey Clisby affirmed 10 December 2021 be placed in a sealed envelope on the Court file which is marked: "Not to be opened except on the order of a Judge of this Court".

Substituted service orders

- 3 Pursuant to r.116 of the UCPR, that service of:
 - (a) this application, and any further application for directions that the applicant may make;
 - (b) any court documents filed by the applicants in respect of this application or any further application, which the applicants seek to serve on the members of the first respondent; and
 - (c) any orders made in respect of this application or any further application, which are not required to be served personally;be deemed effected on each of the members of the first respondent five days after the applicant:
 - (d) posts such documents in PDF form on the website "<https://www.kordamentha.com/creditors/lm-managed-performance-fund>"; and
 - (e) either:
 - i. sends an email to all the members of the first respondent at their last known email addresses, notifying them of the general nature of the Court documents and that the documents have been posted on that website; or
 - ii. in the circumstances set out in paragraph 4, sends a notice by pre-paid post to the relevant members of the respondent.
- 4 Where the applicant receives a response to an email, such as an undeliverable message, from all email addresses associated with a unitholder, including any

alternative email address and advisor email address associated with the relevant unitholder, that indicates the email referred to in paragraph (1)(e)(i) was not received, and the applicant has a postal address for that member, the applicant is to send a notice by pre-paid post to the postal address of the member, which notifies them of the general nature of the Court documents and that the Court documents have been posted on the Trustee's website..

- 5 The applicant is not required to take further steps to serve members of the respondent whose email addresses return permanent undeliverable receipts, and for whom the applicant does not have a postal address.

Costs and other orders

- 6 The applicant's costs of and incidental to the application dated 4 December 2020 be paid out of the assets of the MPF, on the indemnity basis.
- 7 Such further or other orders or directions as the Court sees fit.

This application will be heard by the Court at Brisbane on: 14/12/2021 ~~2022~~
at:

Filed in the Brisbane Registry on 10 DEC 2021.

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:

1. Affidavit of Jarrod Villani filed on 8 December 2020;
2. Affidavit of Stacey Clisby affirmed on 10 December 2021.

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THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED:

- 15 minutes, in respect of the relief sought in paragraphs 3 to 5 of this application (substituted service orders); and
- Half a day for the hearing of the remainder of the application.

Signed:  , by her employed solicitor

Description: Solicitor

Dated: 10 December 2021

This application is to be served on the Members of the LM Managed Performance Fund.