

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**

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 Orders 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) The appropriate register: adopting the unitholder transaction register titled "Register 1.xlsx" identified in paragraph 65 of the affidavit of Mr Jarrod Villani sworn 4 December 2020 (**the Villani affidavit**) as the unitholder register of the MPF, for the purposes of making a distribution to members and finalising the winding up of the LM Managed Performance Fund (**the MPF**);
 - (b) Account 20003 (Returned Investment Payments): taking no further steps concerning the transactions recorded in Account 20003 that occurred prior to 1 July 2012, as identified in paragraphs 131 and 136 of the Villani affidavit;
 - (c) Account 20200 (Funds Awaiting Investment):
 - (i) taking no further steps concerning the transactions identified in paragraph 143 of the Villani affidavit;
 - (ii) returning the amounts identified in paragraph 144 of the Villani affidavit to the prospective investors who made the payments, or if the funds cannot be so returned, paying the balance to the Australian Securities and Investment Commission;

APPLICATION
Filed on Behalf of the Applicant
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

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Sydney NSW 2000
Phone No: (02) 8076 8090

- (d) Account 20400 (Distributions Payable):
 - (i) sending a notice to all members of the first respondent, requesting any unitholder who believes they have not received a distribution for the period prior to 1 July 2012 to come forward and provide relevant supporting documentation;
 - (ii) taking no further steps concerning the transactions recorded in Account 20400 that occurred prior to 1 July 2012, as identified in paragraph 147 of the affidavit of Villani, apart from assessing claims received from members of the first respondent in response to the applicant's notice;
- (e) Account 20401 (Investor Funds Payable (Redemptions)): in paying the amounts identified in paragraph 156 of the Villani affidavit to the members identified in the Trustee Redemption Schedule;
- (f) Account 20402 (Accrued Interest (Distributions)):
 - (i) making the payment identified in paragraph 166 of the Villani affidavit;
 - (ii) otherwise taking no further steps concerning the transactions recorded in Account 20402,
- (g) Unitholdings past maturity: not taking any steps in relation to members of the MPF whose investments expired prior to the closure of the MPF on 19 March 2013, but whose units in the MPF were not redeemed, as identified in paragraph 176.4 of the Villani affidavit;
- (h) Nominal unitholdings: not taking any steps in relation to those members of the MPF who have a unit balance of less than 40 units, as identified in paragraph 180 of the Villani affidavit;
- (i) Refunded withholding tax: including the Returned Withholding Tax in the funds available for distribution to current members of the MPF; and
- (j) Foreign currency investors: calculating distributions to be made to members of the MPF who invested via currencies other than Australian dollars as follows:
 - (i) by taking the value of each member's unitholding, based on the Australian dollar value for that unitholding recorded in Register 1, as at 19 March 2013 (**AUD Value of Investment**);
 - (ii) by calculating the amount available for distribution by dividing each member's AUD Value of Investment against the Australian dollar value of all accounts recorded in Register 1, as at 19 March 2013.

Confidentiality orders

- 2 An order that the USB exhibit marked "Confidential Exhibit JV-20" to the affidavit of Jarrod Villani sworn 4 December 2020 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."
- 3 An order that the confidential exhibit marked "Confidential Exhibit JV-21" to the affidavit of Jarrod Villani sworn 4 December 2020 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

- 4 Pursuant to r.116 of the UCPR, that service of:
 - (a) this application;
 - (b) any court documents filed by the applicants in respect of this application, which the applicants seek to serve on the members of the first respondent; and
 - (c) any orders made in respect of this 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 applicants:
 - (d) post such documents in PDF form on the website "<https://www.kordamentha.com/creditors/lm-managed-performance-fund>"; and
 - (e) send 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.

Costs and other orders

- 5 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.
- 6 Such further or other orders or directions as the Court sees fit.

This application will be heard by the Court at Brisbane on:
at:

2020

Filed in the Brisbane Registry on

2020.

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 sworn on 4 December 2020 and its exhibits marked "Exhibit JV-19" and "Confidential Exhibit JV-20".
2. Affidavit of Jarrod Villani sworn on 4 December 2020 and its exhibit marked "Confidential Exhibit JV-21".
3. Affidavit of Jarrod Villani sworn on 4 December 2020 and its exhibits marked "Exhibit JV-22" and "Exhibit JV-23".

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED:

- 20 minutes, in respect of the relief sought in paragraph 4 of the application;
- One day for the hearing of the remainder of the application.

Signed:

Description:

Solicitor

Dated:

4 December 2020

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