

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act 1973* (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.