

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

0172  
Cause No FSD of 2015

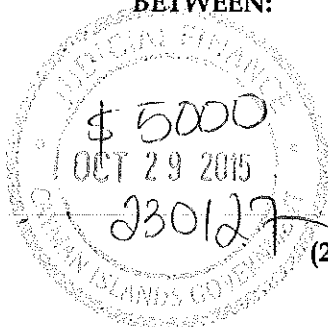
BETWEEN:

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

-and-

(1) BANK OF BERMUDA (CAYMAN) LIMITED  
(2) HSBC SECURITIES SERVICES (LUXEMBOURG) SA

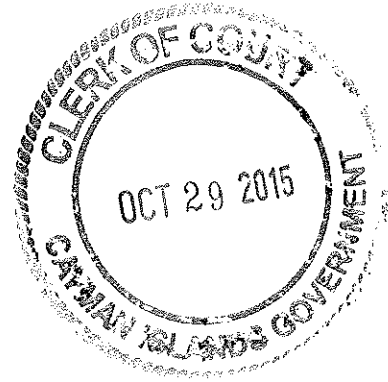
Defendants



WRIT OF SUMMONS

TO: Bank of Bermuda (Cayman) Limited  
PO Box 513 KY1-1106, Strathvale House,  
90 North Church Street, George Town,  
Grand Cayman, Cayman Islands

AND: HSBC Securities Services (Luxembourg) SA  
16, boulevard d'Avranches  
L-1160 Luxembourg



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this <sup>th</sup> day of October 2015.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.  
**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

FINANCIAL SERVICES DIVISION

Cause No FSD of 2015

BETWEEN:

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

Plaintiff

-and-

(1) BANK OF BERMUDA (CAYMAN) LIMITED

(2) HSBC SECURITIES SERVICES (LUXEMBOURG) SA

Defendants

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GENERAL INDORSEMENT

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**The Plaintiff claims:**

1. As against the First Defendant;

Damages for breach of contract on the part of the First Defendant in respect of the period during which the First Defendant acted as administrator to the Plaintiff. Such breaches relate in particular to the following: -

- (1) the First Defendant did not exercise reasonable care and skill in keeping the accounts and/or financial books and records of the Plaintiff; and
- (2) the First Defendant in its capacity as administrator did not exercise reasonable care and skill in making the reports dated 31.10.02, 31.5.03, 30.4.04, 28.2.05, 30.4.06, 31.12.07, 31.3.08, 30.06.08, which reports were inaccurate and/or omitted to include in such reports (or failed to use reasonable care and skill to include in such reports) information which it was aware (or should have been aware) was relevant to the provision of services by the First Defendant pursuant to the administration agreement dated 19 December 1996.

2. As against the Second Defendant;

Damages for breach of contract on the part of the Second Defendant in respect of the period during which the Second Defendant acted as custodian to the Plaintiff (including damages for lost profit). Such breaches relate in particular to the following: -

- (1) the Second Defendant in its capacity as custodian did not exercise reasonable care and skill in making the reports dated 28.2.05, 30.4.06, 31.12.07 and 31.3.08, which reports were inaccurate and/or omitted to include in such reports (or failed to use reasonable care and skill to include in such reports) information which it was aware (or should have been aware) was relevant to the provision of services by the Second Defendant pursuant to the further custodian agreement dated 19 December 1996 ("**the Custodian Agreement**");
- (2) the Second Defendant failed, or failed to use reasonable care and skill, to keep safe and hold the Plaintiff's cash which was deposited with or delivered to the Second Defendant (including any deposited with or delivered to Bernard L Madoff Investment Securities LLC ("**BLMIS**") as the Second Defendant's sub-custodian and/or nominee);
- (3) the Second Defendant failed, or failed to use reasonable care and skill, to deal with the Plaintiff's cash which was deposited with or delivered to the Second Defendant (including any deposited with or delivered to BLMIS acting as the Second Defendant's sub-custodian and/or nominee) only in accordance with the terms of the Custodian Agreement and, where cash was disbursed for the purposes of acquiring securities, to receive and hold such securities in accordance with Clause 9 of the Custodian Agreement;
- (4) at all material times after 1 May 2007, the Second Defendant failed to advise the Plaintiff that it was unable to discharge properly its duties under the Custodian Agreement.

3. As against the Second Defendant;

Damages or equitable compensation for breach of fiduciary duty on the Part of the Second Defendant in respect of the period during which the Second Defendant acted as custodian to the Plaintiff (including damages or equitable compensation for loss of profit). Such breaches relate in particular to the following -:

- (1) the Second Defendant when acting in its capacity as custodian for the Plaintiff failed to act in the Plaintiff's best interests, and failed to subordinate its own interests to those of the Plaintiff;
- (2) the Second Defendant when acting in its capacity as custodian for the Plaintiff failed to make available to the Plaintiff (whether by way of inclusion in the Custodian Reports or otherwise) material information of which the Second Defendant was aware which caused (or ought to have caused) a reasonable suspicion that BLMIS (when acting as the Second Defendant's sub-custodian, or otherwise receiving and holding the Plaintiff's assets (whether cash or securities including by way of shares in other open-ended investment funds) whilst the Second Defendant was acting as custodian) might be engaged in financial impropriety or was otherwise putting at risk the Plaintiff's assets.

4. As against the First Defendant and/or the Second Defendant;

A declaration that the First and/or Second Defendant are liable to compensate the Plaintiff in damages, alternatively equitable compensation, for the loss or reduction in value of these investments, and/or loss of profit by reason of breaches of contractual and/or (in respect of the Second Defendant) fiduciary duties.

5. Interest pursuant to section 34 of the Judicature Law (2007 Revision) on such damages or equitable compensation as may be awarded to it at such rate and for such period as the Court thinks fit.

6. Such further or other relief as this Honourable Court thinks fit.

7. Costs.

Dated this <sup>th</sup> day of October 2015

Mourant Ozannes

**Mourant Ozannes**  
Attorneys-at-law for the Plaintiff

This Writ was issued by Mourant Ozannes, Attorneys at Law for the Plaintiff, whose address for service 94 Solaris Avenue, Camana Bay, PO Box 1348, Grand Cayman KY1-1108 (ref:8000613/65271990/1)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

## NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of ..... days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

Cause No FSD of 2013

BETWEEN:

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

Plaintiff

-and-

(1) BANK OF BERMUDA (CAYMAN) LIMITED  
(2) HSBC SECURITIES SERVICES (LUXEMBOURG) SA

Defendants

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, **THIS FORM MAY HAVE TO BE RETURNED.**

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
 yes  no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)  
 yes  no

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Service of the Writ is acknowledged accordingly

(Signed) .....

..... [Attorneys for the Defendant]  
Address for service: (*See overleaf*)

NOTES ON ADDRESS FOR SERVICE

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Mourant Ozannes  
Attorneys at Law  
94 Solaris Avenue  
Camana Bay  
PO Box 1348  
Grand Cayman KY1-1108  
  
ref: 8000613/65271990/1.

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

[Empty box for defendant's attorney indorsement]