

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO. 104 OF 2005

BETWEEN: TRITTON DEVELOPMENT FUND LTD. Plaintiff

AND: (1) FORTIS BANK (CAYMAN) LIMITED  
(formerly MEESPIERSON (CAYMAN) LIMITED)  
(2) MEESPIERSON MANAGEMENT (CAYMAN) LIMITED  
(3) MEESPIERSON NOMINEES (CAYMAN) LIMITED Defendants



**WRIT OF SUMMONS**

TO: (1) FORTIS BANK (CAYMAN) LIMITED  
(formerly MEESPIERSON (CAYMAN) LIMITED)  
(2) MEESPIERSON MANAGEMENT (CAYMAN) LIMITED  
(3) MEESPIERSON NOMINEES (CAYMAN) LIMITED Defendants

whose registered offices are all at Grand Pavilion Commercial Centre,  
Bougainvillea Way, 802 West Bay Road, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, Tritton Development Fund Ltd. whose registered office is at Harbour Centre, Third Floor, George Town, Grand Cayman, in respect of the claim set out on the next page.

Within fourteen (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 8th day of March 2005

NOTE - This Writ may not be served later than 4 calendar 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.

## STATEMENT OF CLAIM

### **A. Abbreviations and Definitions**

1. In this pleading the following abbreviations and definitions are adopted:

“Tritton” - Tritton Development Fund Limited, the Plaintiff, an exempt company incorporated in the Cayman Islands pursuant to the Companies Law (1998 Revision) on 21 May 1999 and a mutual fund registered under the Mutual Funds Law (1996 Revision);

“MP Cayman” - Fortis Bank (Cayman) Limited (formerly MeesPierson (Cayman) Limited), the First Defendant, a Cayman Islands licensed bank, trust company and mutual fund administrator and a member of the Fortis group of companies;

“MP Management” - MeesPierson Management (Cayman) Limited, the Second Defendant, a company incorporated in the Cayman Islands and a member of the Fortis group of companies;

“MP Nominees” - MeesPierson Nominees (Cayman) Limited, the Third Defendant, a company incorporated in the Cayman Islands and a member of the Fortis group of companies;

“Fortis Group” - the Fortis group, an international group of companies purporting to provide insurance, banking and specialist investment and financial services and to have extensive experience and high skill in the provision of such services;

“Torkmain” - Torkmain Investments Limited, an exempt company incorporated in the Cayman Islands pursuant to the Companies Law (1998 Revision) on 30 March 1999;

“Levitan” - Levitan Investments Limited, an exempt company incorporated in the Cayman Islands pursuant to the Companies Law (1998 Revision) on 30 March 1999;

"IPB" - Investicni a Postovni banka a.s. ("IPB"), at all material times a bank incorporated in the Czech Republic whose shares were listed on the Prague Stock Exchange until its forced administration on 16 June 2000.

"The Czech Beer Sellers" - Collectively Czech Trade a.s., Bankovni holdings a.s. and Prosper International a.s., three companies incorporated in the Czech Republic.

"Nomura" - The Nomura group of companies, whose principal business is international investment banking and of which the ultimate parent is Nomura Holdings Inc., a company incorporated in Japan.

"Pembbridge" - Pembbridge Investments B.V., a company incorporated in the Netherlands and a member of the Nomura group.

"Nomura Europe" - Nomura Europe Plc, a company incorporated in England and a member of the Nomura group.

## **B. Tritton**

2. Tritton was formed as a company with the principal object of carrying on business as an investment holding company.
3. The authorised share capital is Czk. 50,000 divided into 100 "Founder Shares" of Czk. 100 each (conferring voting rights but no right to participate in any distribution) and 40,000 "Participating Shares" of Czk.1 each (conferring no voting rights but a right to a share in any distribution). The "Founder Shares" were formerly held by MP Cayman upon discretionary trusts for charitable objects pursuant to a written Declaration of Trust dated 21 May 1999. The "Participating Shares" have been issued pursuant to the placing referred to in paragraph 13 below.
4. On 21 May 1999, the date of its incorporation, and at all material times thereafter MP

Management and MP Nominees were the directors of Tritton and MP Management was the Secretary of the said company.

5. By virtue of their position as directors of Tritton, MP Management and MP Nominees owed Tritton a duty to exercise such skill, care and diligence as a reasonable person having both the general knowledge, skill and experience that might reasonably be expected of a person carrying out the same functions as carried out by them as directors and the general knowledge, skill and experience that MP Management and MP Nominees actually had or purported to have.
6. Each of MP Management and MP Nominees purported to have specialist skills of the highest quality and great experience in the administration of investment companies.
7. Further or alternatively, each of MP Management and MP Nominees owed a duty to Tritton to act with all reasonable, skill, care and diligence in the performance of their office as directors.
8. Further MP Management and MP Nominees owed a fiduciary duty to Tritton:
  - (1) To act bona fide and in the best interests of Tritton;
  - (2) To exercise their powers as directors for proper, as opposed to collateral purposes;  
and
  - (3) Not to delegate the discretions and powers accorded to them as directors save as permitted by the Articles of Association of Tritton.
9. By a written agreement dated 2 June 1999 and made between Tritton and MP Cayman and another and entitled "Investment Management Agreement" ("the IM Agreement") it was expressly provided that:

- (1) Tritton appointed MP Cayman to act as its investment manager;
- (2) As investment manager MP Cayman was obliged, among other things, to:
  - (a) manage on behalf of Tritton the realisation, investment and reinvestment of its securities and investments on a discretionary basis;
  - (b) use its reasonable endeavours to carry out the investment objectives set out in a placing memorandum to be issued in respect of the initial placing of non-voting redeemable participating shares in the capital of Tritton (“the Investment Objectives”) and to keep such objectives under continuous review;
  - (c) advise the Board of Tritton on its investment strategy and investigate and determine particular investments for acquisition, variation and realisation within the scope of the Investment Objectives;
  - (d) make purchases and sales of securities and other investments for Tritton;
  - (e) carry out reviews of any securities and other investments held by Tritton; and
  - (f) advise Tritton concerning all actions which it appeared to MP Cayman Tritton should consider taking to carry into effect investment of its available capital;
- (3) In performance of its services MP Cayman was to:
  - (a) avail itself of all skills and expertise relating to the investments or proposed investments of Tritton possessed by employees and officers of MP Cayman and MeesPierson (Bahamas) Limited;
  - (b) Appoint Pyrrhula a.s. as a specialist adviser in relation to an initial portfolio of Czech securities; and

(c) act as a faithful and honest adviser in relation to all advice given; and

(4) In consideration of the foregoing was to receive a quarterly management fee of 0.09375% of the net asset value of Tritton on the valuation dates provided for.

10. It was an implied term of the IM Agreement that MP Cayman would perform the aforesaid services exercising all reasonable skill, care and diligence to the standard to be expected of an international bank, trust company and mutual fund administrator of the type which MP Cayman purported to be. In this connection MP Cayman purported to have specialist skills of the highest quality and to have great experience. Tritton will, among other things, rely on the Memorandum regarding the placing the 40,000 "Participating Shares" in Tritton in which MP Cayman was described as *"one of the largest of the Cayman Islands licenced fund administrators providing full administration services to more than 100 funds the net assets of which exceed US\$5 billion"* and as part of Fortis *"one of the largest financial services providers, offering a broad range of financial services through various distribution channels"*.

11. Further or alternatively it was an implied term of the IM Agreement that MP Cayman would perform the aforesaid services exercising all reasonable skill, care and diligence.

12. Further, as the agent of Tritton, MP Cayman owed a fiduciary duty:

(1) not to delegate to others, save as authorised by Tritton, the duties and functions which it had been appointed to perform; and

(2) not to allow itself to have duties to other parties in conflict with its duties to Tritton without the full, free and informed consent of Tritton.

13. In or about June 1999 Tritton issued the Memorandum regarding the placing of the 40,000 "Participating Shares" in Tritton. The Memorandum provided that the investment objectives and policies of Tritton were to maximise total investment return by investing in a wide range of investment assets.

### **C. Torkmain and Levitan**

14. Torkmain and Levitan were formed as "special purpose vehicles" for the purposes of effecting transactions organised by IPB and/or certain of its shareholders and/or the Nomura group of companies ("Project Leo") involving:

(1) the acquisition by Torkmain and Levitan of 93 promissory notes issued by the Czech Beer Sellers to IPB on 12 March 1998 for an aggregate sum of Czk 7,147,214,800 plus interest and which fell due for payment on 31 December 1999;

(2) in consideration of such acquisition, the provision of promissory notes by Torkmain and Levitan to IPB ;

(3) the exchange by Torkmain and Levitan of the said promissory notes issued by the Czech Beer Sellers for promissory notes issued by Pembridge;

(4) the execution of put option agreements whereby Pembridge could settle the liability arising in respect of its promissory notes by either a payment in cash or the delivery of shares in IPB at a deemed value or "strike price";

(5) the assignment by IPB of such promissory notes issued by Torkmain and Levitan to Tritton in return for "Participating Shares" in Tritton; and

(6) the release of Torkmain and Levitan from their obligations under the said promissory notes in return for the allotment of shares issued by them to Tritton.

In relation to the said transaction or transactions Tritton will refer to the contents of written confidentiality undertakings signed by representatives of Torkmain and Levitan and addressed to the Czech Beer Sellers, Pembridge and Nomura and the contents of the Board minutes of Torkmain and Levitan dated 2nd June 1999 referred to below.

15. At all material times the directors of Torkmain and Levitan were MP Nominees and MP Management.

## D. The May/June 1999 Transaction

### (1) Breach of Contract/Duty

16. In or about May 1999, MP Cayman advised and MP Management and MP Nominees decided that Tritton should participate in Project Leo and enter into the aforesaid transactions and thereby acquire shares in Torkmain and Levitan in substitution for the rights arising under promissory notes to be issued by Torkmain and Levitan. Tritton will rely upon the terms of the minutes of the Board meetings of Torkmain and Levitan dated 2 June 1999 which record such decision.

17. Thereafter Tritton duly participated in a transaction involving the following steps:

(1) the execution of written agreements between Torkmain and Levitan respectively and IPB entitled "Securities Purchase Agreement" and dated "as of" 2 June 1999 whereby, in return of the assignment of 93 promissory notes issued by the Czech Beer Sellers for the aggregate sum Czk.7,147,214,800 together with accrued interest, Torkmain and Levitan issued promissory notes to IPB in the aggregate sum of Czk.9,211,878,713 ("the T & L Notes");

(2) the execution of a written agreement entitled "Agreement on Purchase of Notes" dated 3 June 1999 and made between Pembridge, Torkmain and Levitan, it was agreed, inter alia, as follows:

(a) Pembridge would issue a promissory note to Torkmain in the sum of CZK3,723,698,911 together with interest at the rate of 16.1% per annum from 8 March 1998 payable on or before 31 December 1999;

(b) Pembridge would issue a promissory note to Levitan in the sum of CZK3,423,515,889 together with interest at the rate of 16.47% per annum from 8

March 1998 payable on or before 31 December 1999 (hereafter referred to in conjunction with the aforesaid note issued to Torkmain as the "Pembridge Notes");

(c) Torkmain and Levitan would deliver the 93 promissory notes issued by the Czech Beer Sellers to Pembridge;

(d) Torkmain and Levitan would each enter into a Put Option Agreement with Pembridge.

The said agreement was completed on the same day, namely, 3 June 1999;

(3) the execution of written agreements entitled "Put Option and Set-Off Agreement" dated 3 June 1999 made between Pembridge and Torkmain and Levitan whereby:

(a) Pembridge might, at any time during the period commencing on 3 June 1999 and ending five business days prior to 31 December 1999, require Torkmain and Levitan to purchase shares in IPB at a price per share of Czk. 115.7 together with interest thereon at the rate of 16.47% per annum from 8 March 1998 until settlement by serving a notice on Torkmain and Levitan specifying the shares to be purchased and the price for such shares ("the Put Options");

(b) Upon the service of any such notice, the price therein referred to would be set-off against any amount due and payable under the Pembridge Notes;

(4) the execution of a written agreement made between IPB and Tritton dated 2 June 1999 ("the Subscription Agreement") whereby it was agreed that IPB would subscribe for 250 "Participating Shares" in Tritton and would satisfy the Subscription Price by assigning the T & L Notes to Tritton; and

(5) the subsequent variation of the said agreement made on or about 17 December 1999 (as pleaded below) whereby Tritton and Torkmain and Levitan agreed that the T & L Notes would only be the subject of limited recourse by Tritton. The recourse was limited to value of the net assets of Torkmain and Levitan.

18. The price of IPB shares on the Prague Stock Exchange as of 3 June 1999, being the earliest date upon which Pembridge could have exercised the Put Options, was Czk 94.59 per share. The price per IPB share, as at 3 June 1999, as determined in accordance with the Put Options, was CZK138.78 in the case of Torkmain and CZK139.29 in the case of Levitan, a difference of Czk.44.19 and CZK44.7 respectively. The terms of the Put Options were such that, when fully exercised, the liability of Pembridge to Torkmain and Levitan under the Pembridge Notes would be discharged. Upon such exercise as at 3 June 1999, Torkmain would have acquired 32,187,742 IPB shares at an aggregate price which exceeded their market value by Czk. 1,422,376,310 and Levitan would have acquired 29,592,952 IPB shares at an aggregate price which exceeded their market value by Czk. 1,322,904,954.

19. MP Cayman acted deliberately and wilfully and in any event in breach of contract and/or negligently in advising Tritton to participate into the said transaction:

(1) MP Cayman took no account of the fact or failed properly to take account of the fact that Torkmain and Levitan had no assets other than the aforesaid promissory notes issued by Pembridge which could be settled with IPB shares;

(2) MP Cayman took no account of the fact or failed properly to take into account the fact that the deemed price or "strike price" of the IPB shares for the purposes of such settlement under the Put Options was significantly higher than the quoted price of IPB shares; and

(3) accordingly, failed to take account of the fact or failed properly to take account of the fact that Torkmain and Levitan might potentially have net assets significantly lower in value as compared with the value of shares in Tritton issued to IPB.

20. Further MP Cayman acted wilfully and/or recklessly and in any event in breach of fiduciary duty in so advising in that:

(1) MP Cayman failed to perform its functions and powers as the agent of Tritton when advising in respect of the said transaction and instead in fact delegated its functions and

powers to IPB and/or shareholders in IPB and/or Nomura and acted in accordance with their requirements; and

(2) MP Cayman continued to act and advise upon the said transaction when other members of the Fortis group acted as directors of Torkmain and Levitan and thereby when there was a conflict of interest and/or duty.

21. MP Management and MP Nominees acted wilfully and/or recklessly and in any event in breach of duty and/or negligently and/or in a way in which no reasonable director in their position and with their expertise would have acted in deciding to enter into the said transaction by failing to have regard to the matters set out in paragraph 19 above.

22. Further or alternatively MP Management and MP Nominees acted wilfully and/or recklessly and in any event in breach of fiduciary duty in causing Tritton to participate in the said transaction in that:

(1) they failed to act bona fide in the best interests of Tritton and to exercise their powers for proper purposes but instead acted in the interests and at the direction of other parties namely IPB and/or shareholders in IPB and/or Nomura;

(2) continued to act on behalf of Tritton in this transaction in circumstances in which there was a conflict of duty as a result of their position as directors of Torkmain and Levitan.

## **(2) Losses**

23. By reason of the aforesaid breaches of contract and/or duty Tritton has suffered loss and damage.

### **Particulars**

(1) Project Leo involved a number of steps as hereinbefore pleaded. Those which involved Tritton and Torkmain and Levitan were linked to transactions involving Pembridge and Torkmain and Levitan.

- (2) Accordingly the grant of the Put Options was linked to (a) the assignment by IPB of promissory notes issued by Torkmain and Levitan to Tritton in return for "Participating Shares" in Tritton and (b) the release of Torkmain and Levitan from their obligations under the said promissory notes in return initially for the allotment of shares issued by them to Tritton but latterly (as varied) the agreement whereby Tritton would have recourse under the T & L Notes limited to the value of the net assets of Torkmain and Levitan. Without the agreement of Tritton to the aforesaid steps Torkmain and Levitan would not have granted the Put Options; and
- (3) Accordingly by virtue of the agreement of Tritton first to substitute the promissory notes of Torkmain and Levitan for shares in those companies and then to limit recourse in respect of such notes, as pleaded above, the Board of Torkmain and Levitan had no incentive to seek and, as planned, did not seek, any better terms from Pembridge or Nomura in respect of the Put Options (as is recorded in the minutes of the Board meetings of Torkmain and Levitan dated 2<sup>nd</sup> June 1999 and 31<sup>st</sup> December 1999).
- (4) As a result of the foregoing full payment or at least the chance of obtaining full payment or improved terms as to the method of payment of the Pembridge Notes (which were the subject of guarantee by Nomura Europe) was lost and thereby Tritton in turn lost the chance of obtaining a full payment or at least some return or a higher return in respect of the debts due to it under the T & L Notes.

#### **E. The December 1999 Transaction**

##### **(1) Amendment of the Put Options/Subscription Agreements**

24. Pursuant to advice from MP Cayman and the resolution of MP Management and MP Nominees Tritton participated in a further transaction in December 1999 involving the following steps:

(1) By written agreements dated 17 December 1999 ("the Amended Put Options") and made between Pembridge and Torkmain and Levitan respectively, the Put Options were, in consideration of sums of US\$100 expressed to be paid by Pembridge to Torkmain and Levitan respectively, amended by extending the period for the exercise of the same until five business days prior to 31 December 2000.

(2) On or about 17 December 1999:

(a) Pembridge issued fresh notes ("the New Pembridge Notes") to Torkmain and Levitan in the same terms as the Pembridge Notes save that the same were payable on or before 31 December 2000 and bore interest from 1 January 2000 at PRIBOR (as therein defined) plus 1.5% per annum; and

(b) Torkmain and Levitan surrendered the Pembridge Notes to Pembridge.

(3) By a written agreement entitled "Amendment 1" varying the Subscription Agreement, dated 16 December 1999, Tritton and IPB agreed that the number of shares to be subscribed for by IPB should be increased from 250 to 300 but that otherwise the provisions of the Subscription Agreement should remain in full force and effect.

(4) By a Note Assignment Agreement dated 16 December 1999 ("the Torkmain Note Assignment Agreement") and made between Tritton, IPB and Torkmain:

(a) Torkmain consented to the assignment and delivery of the Torkmain promissory note being one of the T & L Notes by IPB to Tritton;

(b) The parties agreed that, on the delivery of the said Torkmain note to Torkmain, Torkmain would issue a new note to Tritton.

(5) By a Note Assignment Agreement dated 16 December 1999 (together with the Torkmain Note Assignment Agreement, "the Note Assignment Agreements") and made between Tritton, IPB and Levitan, the parties agreed in terms identical, mutatis mutandis, to those contained in the Torkmain Note Assignment Agreement.

(6) The T & L Notes were assigned and delivered to Tritton on 17 December 1999. On the same day, 300 shares in Tritton were issued to IPB.

(7) On 17 December 1999, the T & L Notes were delivered by Tritton to Torkmain and Levitan respectively and Torkmain and Levitan issued new notes ("the New T & L Notes") to Tritton the terms of which were identical to the T & L Notes save that:

(a) The New T & L Notes were payable on 31 December 2000 together with interest from 1 January 2000 until payment at PRIBOR plus 1.5% per annum;

(b) The liability of Torkmain and Levitan under the New T & L Notes was limited to the assets of Torkmain and Levitan respectively

## **(2) Breaches of Contract/Duty**

25. MP Cayman acted wilfully and/or recklessly and in any event in breach of contract and negligently in advising Tritton to participate into the said transaction:

(1) MP Cayman took no account of the fact or failed properly to take account of the fact that Torkmain and Levitan had no assets other than the Pembridge Notes which could be settled with IPB shares;

(2) MP Cayman took no account of the fact or failed properly to take into account the fact that:

(a) the deferment of Torkmain and Levitan's respective liabilities under the New T & L Notes to 31 December 2000 increased Tritton's exposure to a fall in the value of IPB shares;

(b) the then market price of IPB shares as quoted on the Prague Stock Exchange, namely, CZK98.13 per share; and

(c ) there was real risk that such market price would fall between 31 December 1999 and 31 December 2000; and

(3) accordingly, failed to take account of the fact or failed properly to take account of the fact that Torkmain and Levitan might potentially have even less net assets as a result of the aforesaid arrangements than under the earlier arrangements of June 1999 pleaded above.

26. Further MP Cayman acted wilfully and/or recklessly and in any event in breach of fiduciary duty in so advising in that:

(1) MP Cayman failed to perform its functions and powers as the agent of Tritton when advising in respect of the said transaction and instead in fact delegated its functions and powers to IPB and/or shareholders in IPB and/or Nomura and acted in accordance with their requirements; and

(2) MP Cayman continued to act and advise upon the said transaction when other members of the Fortis group acted as directors of Torkmain and Levitan and thereby when there was a conflict of interest and/or duty.

27. MP Management and MP Nominees acted wilfully and/or recklessly and in any event in breach of duty and negligently and/or in a way in which no reasonable director in their position and with their expertise would have acted in deciding to enter into the said transaction by failing to have regard to the matters set out in paragraph 25 above and in agreeing on behalf of Tritton to issue an additional 50 shares to IPB for no consideration.

28. Further or alternatively MP Management and MP Nominees acted wilfully and/or recklessly and in any event in breach of fiduciary duty in causing Tritton to participate in the said transaction in that:

(1) they failed to act bona fide in the best interests of Tritton and to exercise their powers for proper purposes but instead acted in the interests and at the direction of other parties namely IPB and/or shareholders in IPB and/or Nomura;

(2) continued to act on behalf of Tritton in this transaction in circumstances in which there was a conflict of duty as a result of their position as directors of Torkmain and Levitan in entering into the Amended Put Options on behalf of Torkmain and Levitan and in agreeing to the replacement of the Pembridge Notes by the New Pembridge Notes.

### **(3) Losses**

29. By reason of the aforesaid breaches of contract and/or duty Tritton has suffered loss and damage.

#### **Particulars**

By 31 December 2000, IPB shares were valueless. The Czech Securities Commission suspended trading in such shares and IPB was placed in administration by the Czech National Bank on 16 June 2000. Accordingly Tritton has suffered loss equivalent to the difference in the net asset value of Torkmain and Levitan as at 31 December 1999 and their present net asset value of nil.

### **F. Interest**


30. Tritton will claim compound interest upon all sums awarded by way of equitable compensation and/or following the taking of an account pursuant to the equitable jurisdiction of the Court for such period, at such rate and with such rests as to the Court shall seem fit.

31. Further or alternatively Tritton will claim simple interest upon all sums found due at such a rate and for such a period as to the Court shall seem fit pursuant to section 34 of the Judicature Law (1995 Revision).

AND the Plaintiff claims:

- (1) Equitable compensation and/or damages;
- (2) An inquiry as to damages;
- (3) Compound interest and/or simple interest pursuant to section 34 of the Judicature Law (1995 Revision);
- (4) All necessary and/or consequential accounts, enquiries and/or directions;
- (5) Costs.

Dated this 8th day of March 2005

  
\_\_\_\_\_  
**QUIN & HAMPSON**  
Attorneys-at-Law for the Plaintiff

**This Writ of Summons** is filed by Quin & Hampson, Attorneys-at-law, for and on behalf of the Plaintiff herein whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman

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 14 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 his 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.

BETWEEN: TRITTON DEVELOPMENT FUND LTD. Plaintiff

AND: (1) FORTIS BANK (CAYMAN) LIMITED (formerly MEESPIERSON (CAYMAN) LIMITED) (2) MEESPIERSON MANAGEMENT (CAYMAN) LIMITED (3) MEESPIERSON NOMINEES (CAYMAN) LIMITED Defendants

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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.

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

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

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

Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

Address for service:

Please complete 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.*

Quin & Hampson  
Attorneys-at-Law  
Harbour Centre, Third Floor  
P.O. Box 1348 GT  
George Town  
Grand Cayman  
(Kenneth Farrow)

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