

**GRAND COURT OF THE CAYMAN ISLANDS****FINANCIAL SERVICES DIVISION****FSD CAUSE NO: OF 2021 ()****BETWEEN: ASIA PRIVATE CREDIT FUND LIMITED (IN
OFFICIAL LIQUIDATION)****AND: ADAMAS GLOBAL ALTERNATIVE
INVESTMENT MANAGEMENT INC.****WRIT OF SUMMONS**

TO: ADAMAS GLOBAL ALTERNATIVE INVESTMENT MANAGEMENT INC. c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands.

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, PO Box 495, 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 9th of February 2021

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.

GENERAL INDORSEMENT

Background

1. Asia Private Credit Fund Limited (in Official Liquidation) (the "**Plaintiff**") was incorporated in the Cayman Islands on 9 February 2010 as an exempted limited company under the Companies Law (as amended) (the "**Companies Law**"). The Plaintiff was assigned company number 236963 and registered with the Cayman Islands Registrar of Companies on 9 February 2010.
2. The Plaintiff carried on business as a mutual fund and is registered as such with the Cayman Islands Monetary Authority ("**CIMA**") with licence number 562026 under the Mutual Funds Law (as revised).

Management Agreement

3. Pursuant to a written agreement dated 27 February 2013 entered into between the Plaintiff and the Defendant (as amended pursuant to a deed of amendment dated 15 January 2015), the Plaintiff engaged the Defendant as manager of the Plaintiff's assets (the "**Management Agreement**").
4. The Defendant is an exempted company incorporated with limited liability under the laws of the Cayman Islands on 5 January 2005 with registration number 143604.
5. The Plaintiff understands that Mr Barry Lau Wang Chi and the late Mr Paul Lincoln Heffner are the majority beneficial owners of the Defendant.
6. The material terms of the Management Agreement are as follows:
 - (a) Clause 3.1 (*Duties of the Manager*): "*subject to the overall control and supervision of the Directors, the Manager will act as manager of the [Plaintiff] and will appoint, and delegate any of its powers under [the Management Agreement] to, the Investment Manager and/or any other person or persons as the Manager considers appropriate, to manage and invest the Portfolio in pursuit of the Investment Objective and subject to the Investment Restrictions described in the Private Placement Memorandum or as otherwise stipulated by the directors from time to time and the Manager shall perform such duties as are customarily*

performed by a manager of an open-ended investment company or as may be agreed from time to time between the [Plaintiff] and the Manager";

- (b) Clause 3.2 (*Duties of the Manager*): *"the Manager may appoint the Investment Manager, and/or such other person or persons as the Manager considers appropriate, to manage and invest the Portfolio on a discretionary basis in pursuit of the Investment Objective and subject to the Investment Restrictions set out in the Private Placement Memorandum or as otherwise stipulated by the Directors from time to time..."*
- (c) Clause 5.1 (*Representations and Warranties of the Manager*): *"the Manager represents and warrants to the [Plaintiff] that: ... (C) it has complied with and will continue to comply with all laws, rules and regulations or court and governmental orders by which it is bound or to which it is subject in connection with the execution and performance of [the Management Agreement]"; and*
- (d) Clause 11.3 (*Permitted Transactions*): *"Each [of the Manager and its directors, officers, employees or Associates] will, at all times, have regard in such event to its obligations to the Fund and will endeavour to ensure that such conflicts are resolved fairly."*

Investment Management Agreement

- 7. Pursuant to a written agreement dated 27 February 2013 entered into between the Defendant and Adamas Asset Management (HK) Limited ("**AAMHK**" or the "**Investment Manager**"), the Defendant engaged the Investment Manager to manage and invest the assets of the Plaintiff (the "**Investment Management Agreement**"). The Investment Manager is a company incorporated under the laws of Hong Kong.
- 8. The Plaintiff understands that Mr Lau and the late Mr Heffner are the majority beneficial owners of the Investment Manager.
- 9. The material terms of the Investment Management Agreement are as follows:
 - (a) Clause 4.1 (*Duties of the Investment Manager*): the Investment Manager's obligation is to *"manage and invest the [assets and investments of the Plaintiff]... in pursuit of the Investment Objective and subject to the Investment Restrictions";*

- (b) Clause 4.2 (*Duties of the Investment Manager*): "Subject to the Investment Objective and the Investment Restrictions, the Investment Manager will have discretion in respect of the [assets and investments of the Plaintiff] and as agent of the [Plaintiff] ... to buy, sell (including without limitation short sales), retain, convert, execute, exchange or otherwise deal in Investments, borrow securities, make deposits, subscribe to issues and offers for sale of, and accept placings, underwritings and sub-underwritings, of any Investments, effect transactions whether or not frequently traded on any such market or exchange (including, without limitation, derivatives transactions, repurchase and reverse repurchase transactions, and securities lending transactions), negotiate, settle and sign on behalf of the [Plaintiff] account opening and any other documentation required to be so negotiated, settled or signed in connection with the execution of transactions in relation to the [assets and investments of the Plaintiff] by the Investment Manager and otherwise act as the Investment Manager judges appropriate in relation to the management and investment of the [assets and investments of the Plaintiff]";
- (c) Clause 5.1 (*Delegation*): "The Investment Manager may delegate any of its functions, powers and duties under this Agreement to any person subject to and on the basis of the provisions of this clause 5... The Investment Manager shall be responsible for the costs of any such delegation including, without limitation, any fees and expense of the delegate.";
- (d) Clause 5.3 (*Delegation*): "The Investment Manager shall remain liable for the acts or omissions of any person to whom it has delegated any of its functions, powers and duties under this Agreement."; and
- (e) Clause 15.1 (*Conflicts of Interest*): "...The Investment Manager [and its directors, officers, employees or Associates] will, at all times, have regard in such event to its obligations to the Manager and the [Plaintiff] and will endeavour to ensure that such conflicts are resolved fairly."
10. As at the date of the Consultancy Agreement (as defined below), Gen2 Partners Investment Management Limited acted as manager of the Plaintiff (before being replaced by the Defendant on 27 February 2013) (the "**Former Manager**") and Gen2 Partners

Limited acted as investment manager of the Plaintiff (before being replaced by the Investment Manager on 27 February 2013) (the "**Former Investment Manager**").

11. The Plaintiff understands that the agreements by which the Former Manager and the Former Investment Manager were engaged as manager and investment manager of the Plaintiff (as applicable) were on substantially similar terms as the Management Agreement and the Investment Management Agreement (as applicable).

The Consultancy Agreement

12. Pursuant to a written agreement dated 1 September 2012 entered into between the Plaintiff and Infinitus Management Company Limited (the "**Consultant**" or "**Infinitus**") (as amended pursuant to the supplement to the consultancy agreement dated 1 April 2013 (the "**Supplement**")), the Former Manager caused the Plaintiff to engage the Consultant as investment consultant to the Plaintiff (the "**Consultancy Agreement**").
13. The Consultant was incorporated as a company with limited liability under the laws of the British Virgin Islands on 13 August 2012, with registration number 1728305. The Consultant changed its name from Congress Global Investments Limited to Infinitus Management Company Limited on 21 November 2012.
14. The Plaintiff understands that the Consultant is an affiliate of the Adamas group. In particular, the Plaintiff understands that:
 - (a) the late Mr Heffner appears to have made payments of professional fees on behalf of the Consultant that were reimbursed to him. Mr Heffner was a former director of the Plaintiff (having resigned on 8 March 2013) and Mr Heffner together with Mr Lau are the majority beneficial owners of the Defendant and the Investment Manager of the Plaintiff;
 - (b) Ms Sandy Huang Chian, a director of the Consultant since 16 December 2013, is also a director and/or officer of a number of other entities affiliated with the Adamas group and certain of its underlying investments, including Reality Virtual Limited, Right Legendary Limited and BRJ China Credit Fund; and
 - (c) in the period between April 2011 and June 2017, the Consultant held shares in the Plaintiff. The Consultant's shareholding fluctuated over time – between c. 0.96% in April 2011 and c. 2.52% in June 2017.

15. The material terms of the Consultancy Agreement are as follows:
- (a) Clause 2.1 (*Appointment of Consultant*): "*The Fund appoints the Consultant from the date of this Agreement to act as a non-exclusive consultant in relation to the provision of the Services to the Fund, and the Consultant accepts that appointment...*";
 - (b) Clause 3.1 (*Consultant's Services*): "*The Consultant will from time to time provide investment consulting services to the Fund. In particular, it agrees to do the following in relation to the Fund:*
 - (a) *introduce potential investments to the Fund for the Fund's own evaluation and assessment for the purposes of investment in the Fund (where the Consultant will not be involved in investment decision process);*
 - (b) *provide advice and assist on structuring of private investments or restructuring of invested private investments;*
 - (c) *provide advice on valuation of investments;*
 - (d) *provide advice and assist on deployment and repatriation of RMB of China onshore investments;*
 - (e) *act as an intermediary between the investee companies and the Fund for ongoing deal monitoring and fee/principal collection; and*
 - (f) *provide such other services as may be agreed between the Fund and the Consultant from time to time,*

such activities together being hereinafter referred to as the "Services". For the avoidance of doubt, the Consultant shall in no circumstances be required to perform any marketing activities for the Fund.";
 - (c) Clause 5.1 (*Non-exclusivity, permissible dealings, cross interests and conflicts of interest*): "*Neither the Consultant's appointment nor the provision of the Consultant's Services under this Agreement is exclusive.*";
 - (d) Clause 5.2 (*Non-exclusivity, permissible dealings, cross interests and conflicts of interest*): "*The Fund acknowledges that neither the Consultant nor any Related*

Person of the Consultant ... (b) is liable to account for any profit or benefit derived by any of them as a result of so acting.";

- (e) Clause 5.5 (*Non-exclusivity, permissible dealings, cross interests and conflicts of interest*): *"The Consultant or Related Person, as the case may be, may (but is not obliged to) manage an actual or potential conflict of interest with the Fund by taking reasonable steps in any one or more of the following ways:*
 - (a) *by disclosing its interest to the Fund;*
 - (b) *by relying on a policy of independence;*
 - (c) *by establishing Chinese walls; and*
 - (d) *by declining to act for the Fund in that instance.";*
 - (f) Clause 6.1 (*Consultant's Fees and Expenses*): *"In consideration for the Services performed by the Consultant, the Fund shall pay to the Consultant a monthly retainer equal to 0.02% of the Fund's NAV payable monthly in arrears from the date of this Agreement (the "Retainer"). Pursuant to the Supplement, with effect from 1 April 2013, the Retainer was increased to 0.05% of the Plaintiff's NAV;*
 - (g) Clause 6.2 (*Consultant's Fees and Expenses*): *"... the Fund shall be liable for all expenses incurred in connection with the provision of the Services..."*; and
 - (h) Clause 13.6 (*Governing law and jurisdiction*): *"This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of Hong Kong."*
16. On 1 September 2015, the Plaintiff served notice of the termination of the Consultancy Agreement on the Consultant pursuant to Clause 11.3 of the Consultancy Agreement, and termination took effect from 30 November 2015.

Amounts paid under the Consultancy Agreement

17. The Plaintiff understands that fees and expenses in the total amount of at least US\$1,244,604 were paid by the Plaintiff to the Consultant, purportedly for investment consulting services provided pursuant to the Consultancy Agreement, as follows:

Date	Amount
5 March 2013	US\$100,752
7 November 2013	US\$286,084
5 March 2014	US\$157,768
10 February 2015 ¹	US\$700,000
Total	US\$1,244,604

18. The Plaintiff understands that further amounts may have been paid by the Plaintiff to the Consultant. In particular, the Plaintiff understands that the Consultant accounted for US\$610,817 in fees and expenses payable by the Plaintiff to the Consultant in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement in 2015 (and which are not reflected in the table above); however, the Plaintiff has been unable to establish whether the payment was paid by the Plaintiff to the Consultant.

Services provided under the Consultancy Agreement

19. Based on a review of the Consultant's management accounts for the period January 2015 to September 2015, it appears that the Consultant did not have any employees, assets or offices. During that period, the Consultant: (a) incurred expenses relating to bank charges, accounting fees, legal expenses and valuation expenses; and (b) did not incur any expenses for payroll, wages, supplies, depreciation and/or rent.

¹ This US\$700,000 payment relates to fees paid by the Plaintiff to the Consultant in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement for work undertaken in 2014.

20. Furthermore, the Plaintiff is not aware of any email or other written correspondence passing between the Plaintiff and the Consultant or their respective directors, officers and/or employees.
21. Accordingly, notwithstanding the payment of at least US\$1,244,604 in fees and/or expenses by the Plaintiff to the Consultant, in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement, the Consultant did not in fact provide investment consulting services to the Plaintiff pursuant to the Consultancy Agreement or at all.

AND THE PLAINTIFF claims:

- (a) loss and damages for negligence, breach of fiduciary duty and/or breach of duty by the Defendant. Such breaches include, but are not limited to:
 - (i) the Defendant failed to act *bona fides* in the best interests of the Plaintiff in maintaining the engagement of the Consultant by the Plaintiff pursuant to the Consulting Agreement and in causing the Plaintiff to pay fees thereunder to the Consultant and in particular, the payment of US\$700,000 on 10 February 2015:
 - (1) the Consulting Agreement had no commercial benefit to the Plaintiff and, in particular, no commercial benefit was received by the Plaintiff from the Consultant in consideration for the payment of US\$700,000 on 10 February 2015 (or any further amounts paid by the Plaintiff to the Consultant thereafter, prior to the termination of the Consultancy Agreement);
 - (2) afforded no benefit to the Plaintiff – namely, no investment consultancy services were provided by the Consultant to the Plaintiff in consideration of the payment of US\$700,000 on 10 February 2015 (or any further amounts paid by the Plaintiff to the Consultant thereafter, prior to the termination of the Consultancy Agreement); and

- (3) resulted in the diminution of the Plaintiff's assets, in the total amount of at least US\$1,244,604, and in particular the payment of US\$700,000 on 10 February 2015;
- (ii) the Defendant failed to exercise due care, skill and diligence in the conduct of its management of the Plaintiff. In particular:
 - (1) in causing the Plaintiff to maintain the engagement of the Consultant by the Plaintiff pursuant to the Consulting Agreement and in causing the Plaintiff to pay fees thereunder to the Consultant and in particular, the payment of US\$700,000 on 10 February 2015; and
 - (2) in failing to disclose and procure the approval of the shareholders of the Plaintiff to the conflicts of interest arising as between the Defendant and the Plaintiff, including as a result of the continued engagement of the Consultant and the payment of fees thereunder to the Consultant, and in particular, the payment of US\$700,000 on 10 February 2015;
 - (iii) the Defendant failed to exercise due care, skill and diligence in supervising the delegation of investment management obligations to the Investment Manager:
 - (1) the Defendant failed to ensure that the Investment Manager acted in the best interests of the Plaintiff; and
 - (2) the Defendant failed to ensure that the Investment Manager exercised due care, skill and diligence in the conduct of its investment management, in each case:
 - (A) in maintaining the engagement of the Consultant by the Plaintiff pursuant to the Consulting Agreement;
 - (B) in procuring the payment of fees thereunder (in particular the US\$700,000 paid by the Plaintiff to the Consultant on 10 February 2015); and

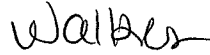
- (C) in failing to ensure the proper delegation of the Investment Manager's investment management obligations to third parties, and in particular, to the Consultant;
- (iv) the Defendant failed to avoid conflicts of interest between its interests and its duty to the Plaintiff;
- (b) loss and damages for breach of contract by the Defendant in its capacity as Manager under the Management Agreement. Such breaches include, but are not limited to:
 - (i) the Defendant failed to comply with its obligation to resolve any conflicts as between the Defendant and its directors, officers, employees and/or Associates fairly, in particular:
 - (1) the Defendant failed to disclose its conflicts of interest in connection with Infinitus, in its capacity as Consultant pursuant to the Consultancy Agreement;
 - (c) loss and damages for conspiracy to injure and/or unlawful means conspiracy by the Defendant. In particular:
 - (i) the Defendant, together with the directors and former directors of the Plaintiff, the Former Manager, the Investment Manager, the Former Investment Manager and/or the Consultant conspired to cause damage to the Plaintiff, by causing the Plaintiff to maintain the Consultancy Agreement and to pay fees thereunder to the Consultant and in particular, the payment of US\$700,000 on 10 February 2015;
 - (ii) or in the alternative, the Defendant, together with the directors and former directors of the Plaintiff, the Former Manager, the Investment Manager, the Former Investment Manager and/or the Consultant conspired to cause damage to the Plaintiff, by causing the Plaintiff to maintain the Consultancy Agreement and to pay fees thereunder to the Consultant and in particular, the payment of US\$700,000 on 10 February 2015, and did so:
 - (1) by unlawful means – each of the Defendant, the directors and former directors of the Plaintiff, the Former Manager, the

Investment Manager and/or the Former Investment Manager (as applicable) acted in breach of duty and/or breach of fiduciary duty to the Plaintiff: (x) in procuring the Plaintiff's entry into the Consulting Agreement; and/or (y) in causing the Plaintiff to maintain the engagement of the Consultant pursuant to the Consulting Agreement, and (z) in causing the Plaintiff to pay fees thereunder to the Consultant and in particular, the payment of US\$700,000 on 10 February 2015 (as applicable); and

- (2) the Defendant was or ought reasonably to be aware of such breaches of duty and/or fiduciary duty. In particular, in circumstances where payments were made by the Plaintiff to the Consultant purportedly in consideration for investment consulting services provided by the Consultant to the Plaintiff pursuant to the Consultancy Agreement and in circumstances where the Consultant was unable to perform (and did not provide) such investment consulting services to the Plaintiff;
- (d) compensation, account and/or damages for dishonest assistance by the Defendant. In particular:
 - (i) there has been a breach of duty and/or breach of fiduciary duty by Defendant and the directors and former directors of the Plaintiff, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable); and
 - (ii) the Defendant dishonestly induced, assisted and/or procured the breaches of duty and/or breaches of fiduciary duty by each of the directors and former directors of the Plaintiff, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable);
- (e) interest pursuant to Section 34 of the Judicature Law (2007 Revision) on such damages as may be awarded to it at such rate and for such period as this Honourable Court thinks fit;
- (f) such further or other relief as this Honourable Court thinks fit; and

(g) costs.

DATED this 9th day of February 2021



WALKERS
Attorneys At Law for the Plaintiff

This **WRIT OF SUMMONS** is filed by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, Cayman Islands for the Plaintiff whose address for service is care of said Attorneys at Law.

Service of the Writ is acknowledged accordingly

(Signed) _____

Attorney for

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.

Walkers
Attorneys at Law
KY1-9001
190 Elgin Avenue
George Town, Grand Cayman

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]

**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.
2. After completion it must be delivered or sent by post to the Courts Office, PO Box 495GT, George Town, Grand Cayman.
3. 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).
4. 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.
5. 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.
6. If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
7. 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

Please complete overleaf

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 Court's 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 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 Court's office.