



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 101 OF 2021 (MRHJ)**

**IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2021 REVISION)  
AND IN THE MATTER OF ADAMAS ASIAN OPPORTUNITY FUND LIMITED**

**WINDING UP PETITION**

**TO THE GRAND COURT**

The humble petition of Adamas Asia Strategic Opportunity Fund Limited (in Official Liquidation), of c/o FTI Consulting (Cayman) Ltd, PO Box 30613, Suite 3212, 53 Market Street, Camana Bay KY1-1203, Cayman Islands (the "**Petitioner**" or "**ASOF**") shows that:

**Introduction**

1. The Petitioner presents this petition for the winding up of Adamas Asian Opportunity Fund Limited (the "**Fund**") and seeks the appointment of joint official liquidators over the Fund.
2. The Petitioner is a creditor of the Fund and seeks the winding up of the Fund pursuant to section 92(d) of the Companies Act (2021 Revision) (the "**Companies Act**") on the ground that the Fund is unable to pay its debts.
3. The Fund is an exempted limited company incorporated under the laws of the Cayman Islands on 18 May 2005, with company number 149136. The Fund is registered as a mutual fund with the Cayman Islands Monetary Authority ("**CIMA**") with reference 605500.
4. The registered office of the Fund is at Maples Corporate Services Limited, PO Box 309, Uglund House, South Church Street, George Town, Grand Cayman KY1-9001, Cayman Islands

5. The objects for which the Fund was established are unrestricted. The current Memorandum and Articles of Association of the Fund were adopted by special resolution on 1 September 2008 (the "**Articles**").
6. The authorised share capital of the Fund is US\$50,000 divided into:
  - (a) 100 "Management Shares" with a nominal value of US\$0.01 par value each; and
  - (b) 4,999,900 "Participating Shares" with a nominal value of US\$0.01 par value each.
7. The most recent records of the Fund which the Petitioner holds indicate that Mr Andrew Main and Mr Takeshi Kadota are the directors of the Fund (together, the "**Directors**").
8. The Fund was established as an open-ended investment company. The Private Placement Memorandum of the Fund dated 29 June 2017 (the "**Original PPM**") (as subsequently amended by the Private Placement Memorandum of the Fund dated 28 September 2018 (the "**Amended PPM**", together with the Original PPM, the "**PPM**")) states that the investment objective of the Fund is "*to achieve a superior risk-adjusted rate of return*".
9. The PPM provides that the Fund's stated investment policy is as follows:

*"The Fund is a fund of funds and will invest its assets in a diversified portfolio of listed and unlisted Underlying Funds with a focus on Asia which use traditional, non-traditional and alternative asset management strategies. The Fund can also invest in non-Asia focused Underlying Funds with unique strategies that can enhance the Fund's overall risk return profile..."*
10. The PPM states that HSBC Trustee (Cayman) Limited, a licensed mutual fund administrator based in the Cayman Islands, acts as the administrator of the Fund (the "**Administrator**").

11. The PPM also states that Adamas Capital Partners Limited, a company incorporated in the Cayman Islands on 11 October 2016 as an exempted limited liability company (with registration number OG-315955), acts as the manager of the Fund (the "**Manager**"). The PPM further provides that:

*"The Manager was appointed pursuant to a management agreement with the Fund [dated 12 August 2005] (the "**Management Agreement**"). Under the Management Agreement, the Manager has agreed to act as manager of the Fund, subject to the overall control and supervision of the Directors, and the Manager has full discretion to manage and invest the assets of the Fund. The Manager may delegate any of its powers under the Management Agreement to any other person or persons as the Manager considers appropriate."*

12. The Original PPM states that Adamas Capital Partners (HK) Limited, a company incorporated in Hong Kong, acted as the investment manager of the Fund (the "**Former Investment Manager**"). The Original PPM further provides that the Former Investment Manager was appointed:

*"to manage and invest the assets of the Fund in pursuit of the investment objective, policy and process and subject to the investment restrictions described in [the Original PPM] pursuant to an investment management agreement between the Manager and the [Former] Investment Manager [dated 27 February 2013] (the "**[Former] Investment Management Agreement**")"*.

13. The Petitioner understands that, pursuant to the Amended PPM, on or around 20 September 2018, Adamas Asset Management (HK) Limited, a company incorporated in Hong Kong, replaced the Former Investment Manager as investment manager of the Fund (the "**Investment Manager**"). The Amended PPM provides that the Investment Manager was appointed:

*"to manage and invest the assets of the Fund in pursuit of the investment objective, policy and process and subject to the investment restrictions described in [the Original PPM] pursuant to an investment management agreement between the Manager and the*

*Investment Manager [dated 20 September 2018] (the "Investment Management Agreement")*".

### The Petitioner

14. The Petitioner is a company incorporated in the Cayman Islands on 10 November 2005 as an exempted limited liability company, with registration number 157778, and is regulated by CIMA as a mutual fund.
15. By Order of this Honourable Court dated 23 July 2019, Mr David Griffin and Mr Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and Mr John Batchelor of FTI Consulting (Australia) Limited, Level 21, 600 Bourke Street, Melbourne, Victoria, 3000, Australia were appointed as Joint Official Liquidators of the Petitioner (the "ASOF JOLs"). The Petitioner therefore acts by the ASOF JOLs. At the time of his appointment, Mr Batchelor was based in Hong Kong and practising at FTI Consulting (Hong Kong) Limited.

### Background

#### *The Subscriptions*

16. Pursuant to subscription applications dated between July 2009 and November 2012, the Petitioner made a number of cash and *in specie* subscriptions for Class I shares in the Fund, pursuant to which the Fund issued the Petitioner 921,412,393 Class I shares in the Fund.
17. The terms that govern such subscriptions are contained in, *inter alia*, the PPM (as amended) and the Articles.

*Redemption Terms*

18. Pursuant to Article 59 of the Articles:
- (a) the Petitioner was entitled to redeem all or any of its Class I shares (being Participating Shares) by serving a redemption notice on the Fund (which was required to be received by such time in relation to a Redemption Day as may be specified in the PPM or such number of Business Days or other period prior to such Redemption Day as may be determined by the Directors); and
  - (b) the Fund was obliged to redeem such Class I shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant class of shares calculated as at the Valuation Day immediately preceding the relevant Redemption Day.
19. Pursuant to Article 1 of the Articles:
- (a) "Redemption Day" is defined, in relation to any class of shares, as *"such day or days as may be specified by the Directors or in the [PPM] upon which a Member may redeem Participating Shares of that Class"*; and
  - (b) "Valuation Day" is defined, in relation to any class of shares, as *"the Business Day or Business Days referred to in the [PPM] or otherwise determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class is calculated."*
20. Pursuant to the terms of the Original PPM (being the PPM in force as at the date of the Redemption Notice, as to which see below at paragraph 23), the Petitioner had the right to request that the Class I shares in the capital of the Fund be redeemed on a "Redemption Day", which in respect of the Class I shares is defined as the first Business Day of each calendar month and/or such other days as the Directors may from time to time determine. A "Business Day" is defined in the Original PPM as: *"any day (other than Saturday) on which banks are open for normal banking business in Hong Kong provided that where, as*

*a result of a Number 8 Typhoon Signal, Black Rainstorm Warning or similar event, the period during which banks in Hong Kong are open on any day are reduced, such day shall not be a Business Day unless the Directors otherwise determine."*

21. Furthermore, pursuant to the terms of the Original PPM, any shareholder seeking to exercise their option to redeem their Class I shares were required to provide prior written notice to HSBC Institutional Trust Services (Asia) Limited, in its capacity as administrator's agent (the "**Administrator's Agent**"), by at least 5.00 pm (Hong Kong time) at least 30 calendar days prior to the relevant Redemption Day, or such lesser period as the Directors may generally or in any particular case determine.
22. Pursuant to Article 65 of the Articles, the Fund was obliged to remit redemption proceeds "*within such period as the Directors shall determine*". At the time of the Petitioner's subscription for Class I shares in the capital of the Fund, the Original PPM provided that redemption proceeds would "normally" be paid within 15 calendar days of the calculation of the Redemption Price.

### **The Unpaid Redemption Debt**

23. On 14 March 2018, the Petitioner submitted a notice for the full redemption of its investment in Class I shares in the capital of the Fund (the "**Redemption Notice**"). The Redemption Notice specified 3 July 2018 as the "Dealing Date" (being the "Redemption Day" as defined in the Articles).
24. The Redemption Notice (being countersigned by the Fund) was provided to the Administrator's Agent and/or the Fund with sufficient notice in advance of the relevant Redemption Day as required pursuant to the Articles and/or the Original PPM (as the PPM then in force).
25. Pursuant to the terms of the Original PPM (as the PPM in force as at the date of the Redemption Notice), redemption proceeds in the amount of US\$1,853,867.38 should have been paid to the Petitioner on or around 29 March 2018. Accordingly, the Petitioner

became a creditor of the Fund in respect of US\$1,853,867.38 pursuant to the Redemption Notice on 3 July 2018.

26. On 15 June 2020, redemption proceeds in the amount of US\$814,165.93 were paid to the Petitioner. The balance of the redemption proceeds, in the amount of US\$1,039,701.45 (the "**Redemption Debt**"), have not been paid by the Fund to the Petitioner and remain outstanding.
27. On 9 April 2021, the ASOF JOLs sent a final written demand for payment of the Redemption Debt by the Fund within 7 days (i.e. on before 16 April 2021) to the Fund and the Administrator (each at their registered offices in the Cayman Islands) and the Administrator's Agent (at its office in Hong Kong, as provided in the PPM). As at the date of this petition, no payment of the Redemption Debt has been forthcoming.

#### **Relief sought**

28. In the premises:
  - (a) the Petitioner is a creditor of the Fund and has standing to present this petition under section 94(1)(b) of the Companies Act; and
  - (b) the Fund is unable to pay its debts pursuant to sections 92(d) and 93(c) of the Companies Act and is therefore insolvent and should be wound up.

#### **Nomination of Joint Official Liquidators**

29. The Petitioner nominates Mr David Griffin and Mr Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and Mr John Batchelor of FTI Consulting (Australia) Limited, Level 21, 600 Bourke Street, Melbourne, Victoria, 3000, Australia, for appointment as joint official liquidators of the Fund.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Fund be wound up by this Honourable Court in accordance with section 92(d) of the Companies Act.
2. Mr David Griffin and Mr Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and Mr John Batchelor of FTI Consulting (Australia) Limited, Level 21, 600 Bourke Street, Melbourne, Victoria, 3000, Australia, be appointed as joint official liquidators of the Partnership (the "JOLs").
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Fund.
5. The JOLs shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Fund and the winding up of its affairs.
6. The JOLs be authorised to exercise all the powers set out in Parts 1 and II of the Third Schedule of the Companies Act and section 110(2) thereof without the further sanction of this Honourable Court.
7. Without limitation to the generality of the powers specified in paragraph 6 immediately above, it is confirmed that the JOLs shall have the power to:
  - (a) bring or defend any action or other legal proceeding in the name and on behalf of the Fund and to engage attorneys for such purposes in order to secure the assets of the Fund; and
  - (b) take all action required consistent with applicable law to carry on the business of the Fund so far as may be necessary for its beneficial winding up.

8. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment and/or their powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
9. The JOLs be at liberty to appoint attorneys, counsel and professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of The Companies Winding Up Rules, 2018.
10. No disposition of the Fund's property by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this petition shall be voided by virtue of section 99 of the Companies Act.
11. Subject to section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations, 2018 (as amended), the JOLs be authorised to render and pay all invoices out of the assets of the Fund for their own remuneration.
12. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Fund as an expense of the liquidation.
13. The Petitioner's costs of and incidental to the petition shall be paid out of the assets of the Fund as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
14. The JOLs be at liberty to apply.
15. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 23<sup>rd</sup> day of April 2021

FILED the 26<sup>th</sup> day of April 2021

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioner

**NOTE:** This petition is intended to be served on the following parties by way of service upon their registered offices, or otherwise in accordance with any directions of the Honourable Court:

The Fund

The Cayman Islands Monetary Authority

This **PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of their said Attorneys at Law.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.