



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. OF 2021()

BETWEEN:

BRG GRAF GP, LLC as (i) assignee (ii) general partner for and on behalf of the Gottex Real Asset Fund L.P. and (iii) general partner for and on behalf of Gottex Brent Real Asset Fund L.P.

Plaintiff

AND

(1) GOTTEX RAF GP L.P.

(2) GOTTEX FUND MANAGEMENT S.à.r.l.

Defendants

WRIT OF SUMMONS

TO: GOTTEX RAF GP L. P. c/o Maples Corporate Services Limited, Ugland House, South Church Street, PO Box 309, George Town, Grand Cayman, Cayman Islands.

AND TO: GOTTEX FUND MANAGEMENT S.à.r.l. c/o Chemin de Chantavril 1
Nyon, 1260 Switzerland.

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 8th day of December 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

1. The Gottex Real Asset Fund L.P. (“**the Cayman Partnership**”) is an exempted limited partnership with its registered office in the Cayman Islands, constituted by an amended and restated exempted limited partnership agreement dated 28 February 2008 (“**the Cayman LP Agreement**”) between the First Defendant (a Cayman limited partnership) as General Partner (as defined) and the Limited Partners (as defined).
2. The Gottex Brent Real Asset Fund LP (“**the Delaware Partnership**”) is a Delaware Limited Partnership, constituted by an amended and restated exempted limited partnership agreement dated 28 February 2008 (“**the Delaware LP Agreement**”) between the First Defendant (a Cayman limited partnership) as General Partner (as defined) and the Limited Partners (as defined).
3. The Cayman LP Agreement is governed by the laws of the Cayman Islands. Certain expressions in the Cayman LP Agreement are to be construed in accordance with the laws of Delaware. The Delaware LP Agreement is governed by the laws of the State of Delaware.
4. References below to **the Partnerships** or **Partnership Agreements** shall be construed as referring to the Cayman Partnership and its respective LP Agreement and the Delaware Partnership and its respective LP Agreement.
5. The First Defendant was General Partner of the Cayman and Delaware Partnerships at all material times until 10 June 2020. On that date, the First Defendant withdrew

as General Partner and BRG Asset Management LLC (a Delaware limited liability company) was appointed as General Partner to each of the Partnerships, in its stead. Upon BRG Asset Management LLC's accession as General Partner to the Partnerships, amendments were made to the Cayman and Delaware LP Agreements. By Deeds of Substitution dated 27 May 2021, the Plaintiff was substituted as General Partner to each of the Cayman and Delaware Partnerships.

6. The Second Defendant, a Swiss société à responsabilité limitée, provided investment management, advisory and support/administrative services to the Cayman Partnership and to the Delaware Partnership pursuant to separate Investment and Advisory Agreements both dated 29 February 2008 ("IAAs").
7. By various Deeds executed between 4 and 8 December 2021 and governed by the laws of the Cayman Islands, any and all claims vested in certain Limited Partners of the Cayman Partnership against the First Defendant in respect of its conduct as General Partner were assigned to the Plaintiff. Notice of those assignments was given to the First Defendant before the issuing of this Writ.
8. The Plaintiff brings these proceedings (i) as assignee from the said Limited Partners in the Cayman Partnership; (ii) as General Partner, for and on behalf of the Cayman Partnership, pursuant to section 33(1) of the Exempted Limited Partnerships Act (2021 Revision); and (iii) as General Partner on behalf of the Delaware Partnership, pursuant to Sec. 17-403(a) of the Delaware Limited Partnership Act, Sec. 15-405(a) of the Delaware Uniform Partnership Act and the terms and provisions of the Delaware LP Agreement.

9. The terms upon which the First Defendant withdrew as General Partner of the Cayman and Delaware Partnerships were set out in two separate amendment agreements, one in respect of each Partnership, both dated 10 June 2020 and called “Amendment No 1”.
10. Both Amendment No 1 instruments contained, *inter alia*, an express representation and warranty given by the First Defendant on its own behalf and on behalf of the Second Defendant to the Partnerships and to the Limited Partners that “*to the best of its knowledge after due enquiry [the First and Second Defendants] have not at any time prior to the date of Amendment No 1 acted in a grossly negligent manner (to be interpreted under the laws of the state of Delaware) with respect to any matter relating to their management of the Partnership or the Partnership’s investments*”.
11. Under the Partnership Agreements, the General Partner had “*all powers permitted under the [applicable] Law to do any and all things deemed by the GP to be necessary or desirable in furtherance of the purposes of the Partnership in accordance with the Partnership Law and in the best interests of the Partnership*”.
12. At all material times and for the purposes of the facts and matters which are the subject of this claim, each of Mr. Francis Campeau and/or Mr. Tomasz Kopycinski Sztuka directed and/or controlled and/or managed and/or were the directing mind and will of the First and/or Second Defendants, such that their knowledge is attributed to the First and Second Defendants accordingly.
13. These claims arise out of the First and Second Defendants’ conduct as general partner and investment manager in valuing portfolio assets and in drawing and

receiving excessive management fees based on overstated valuations for the period commencing on 10 December 2015 and ending in the course of 2020, following the payment of the last of the management fees referred to below (“**the Period**”).

14. *Inter alia*:

- (a) Article 15.1 of the Partnership Agreements required the First Defendant, as General Partner, to value the assets of the Partnerships at least quarterly and at such other times as were provided or deemed to be necessary by the First Defendant (in its capacity as General Partner).
- (b) Article 2 of the IAAs set out the services to be rendered by the Second Defendant, which included the provision of advice to the Partnerships regarding investments of the type contemplated by the Partnership Agreements, reviewing and assisting in the preparation of documentation in connection with investments the Partnerships determined to pursue; monitoring investments; and performing the day-to-day investment and administrative operations of the Partnerships, including the supervision of the business and affairs of the Partnerships and the provision of information to the Partners (as defined).
- (c) Article 5(a) of the IAA’s provided for the payment of management fees to the Second Defendant, *inter alia*, in respect of the period to which this claim applies, at the rate of 2% of the amount of capital contributed to the Partnership for the purposes of making Portfolio Investments (excluding amounts contributed for expenses) that had not been returned to the Limited Partners, reduced by the amount of net write downs and write offs at the time such management fee was paid.

15. Pursuant to the Partnership Agreements, the First Defendant had both (i) contractual obligations, including warranties and implied covenants of good faith and fair dealing, and/or (ii) fiduciary duties, in respect of the valuations to be undertaken by it under Article 15.1. Further, and/or in the alternative the First Defendant owed duties of care to the Partnerships in tort.
16. Pursuant to the IAAs, the Second Defendant was subject to both (i) contractual obligations, including warranties and implied covenants of good faith and fair dealing, and/or (ii) fiduciary duties, in respect of the provision of advice and information with regard to the valuations to be undertaken by the First Defendant under Article 15.1. Further, and/or in the alternative, the Second Defendant owed duties of care to the Partnerships in tort.
17. In wilful and material breach of the Partnership Agreements, and in carrying out its fiduciary and/or other duties negligently and/or grossly negligently, the First Defendant prepared valuations purportedly pursuant to Article 15.1 without writing down the true (indeed, significantly diminished) value of at least the following Portfolio Investments, Gottex Real Asset Fund 1 (WTP) S.a.r.l., Gottex Real Estate Fund 1 (Coal UM) S.a.r.l., Syncrude Partners L. P. and Gottex Real Estate Fund 1 (CHP) S.a.r.l., with the consequence that the value of assets was significantly overstated in those valuations.
18. In wilful and material breach of the IAAs, and in carrying out its fiduciary and/or other duties negligently and/or grossly negligently, the Second Defendant failed to take proper steps with regard to the provision of accurate information with regard to the (significantly diminished) value of the said assets, with the consequence that the value of those assets was significantly overstated in those valuations.

19. Over the Period, and consequential upon the First Defendant and/or Second Defendant's breaches of contract, and/or breaches of fiduciary duties and/or breaches of tortious duties owed to the Plaintiff, and/or by reason of mistake, the Second Defendant received fees and/or the First Defendant procured and/or allowed the payment of fees to the Second Defendant and/or the First and Second Defendants procured fees that were paid to the Second Defendant purportedly pursuant to article 5(a) of the IAAs based upon the said overstated valuations in the sum of at least approximately US\$14 million.
20. Given that, as stated, the assets in question were overvalued, the management fees received by the Second Defendant were correspondingly excessive, unjustified and unwarranted as the Second Defendant knew or ought to have known and/or were paid pursuant to a mistake of fact as to the proper valuation of the Portfolio Investments. As a consequence, the Second Defendant's receipt and retention of the excess element of those fees was unconscionable and/or the Second Defendant has been unjustly enriched at the Plaintiff's expense; subject to disclosure and/or the taking of an account, the current amount of such enrichment is in the approximate sum of at least US\$5 million (being 36% of the total management fees paid during the Period).
21. Further or alternatively, as a consequence of such breaches of fiduciary duties, and/or breaches of contract, including breach of warranty and breach of the implied covenant of good faith and fair dealing on the part of the First and/or Second Defendants and/or breaches of the tortious duties owed to the Partnerships, the Plaintiff has suffered loss and damage by the amount of such overpayment.

22. By reason of the aforesaid facts and matters, the Plaintiff claims damages and/or an enquiry into damages and/or an account and/or restitution and/or the payment of monies received and any other available remedies.
23. The Plaintiff further claim interest in respect of any sums awarded for such period and at such rate as the Court shall see fit pursuant to section 34 of the Judicature Act (2021 Revision), and its costs of the proceedings.

AND THE PLAINTIFF CLAIMS:

- (a) Damages incurred by reason of the First and/or Second Defendant's breach of contractual duties owed to the Plaintiff; and/or
- (b) Damages incurred by reason of the First and/or Second Defendant's breach of duties owed to the Plaintiff in tort; and/or
- (c) An account and/or an inquiry of what is due to the Plaintiff on account of the aforesaid breaches of fiduciary duty owed to it; and/or
- (d) Payment (or restitution) of the amount found due to the Plaintiff by reason of unjust enrichment, and/or entitlement to such recoupment or disgorgement of profits, benefits or other compensation obtained by First and/or Second Defendant as a result of the incorrect and/or overstated valuation of the Portfolio Investments; and/or
- (e) Payment of the amount found due to the Plaintiff on the taking of an account and/or an inquiry in respect of the aforesaid breaches of fiduciary duty; and
- (f) Interest as aforesaid; and

- (g) Such further or other relief as this Honourable Court thinks fit; and
- (h) Costs.

DATED this 8th day of December 2021

Walkers

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. OF 2021()

BETWEEN:

BRG GRAF GP, LLC as (i) assignee (ii) general partner, for and on behalf of the Gottex Real Asset Fund L.P. and (iii) general partner for and on behalf of the Gottex Brent Real Asset Fund L.P

Plaintiff

AND

- (1) GOTTEX RAF GP L.P.**
- (2) GOTTEX FUND MANAGEMENT S.à.r.l.**

Defendants

ACKNOWLEDGEMENT 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

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

given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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

no

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 SW/JOD/JM/L11618
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

**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.