

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD ²³² OF 2018

IN THE MATTER OF SECTION 131 OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF ASIA PRIVATE CREDIT FUND LIMITED (IN VOLUNTARY LIQUIDATION)

PETITION

TO THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of the Public Institution for Social Security for the State of Kuwait, PO Box 24324 Safat, 13104, State of Kuwait (the "**Petitioner**") shows that:

Introduction

1. Asia Private Credit Fund Limited (in Voluntary Liquidation) (the "**Company**") 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 Company was assigned company number 236963 and registered with the Cayman Islands Registrar of Companies on or about 9 February 2010.
2. The registered office of the Company is at Maples Corporate Services Limited, P.O. Box 309, Uglan House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.
3. The Company carries 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).
4. The Company was established with the objective of achieving superior consistent risk adjusted returns with maximum downside protection through maximising total investment

yield and capital appreciation of short to medium-term special situation investments in growth companies in the Asia region.

5. The most recent version of the Memorandum and Articles of Association was adopted by special resolution on 15 January 2015.
6. The Company is managed by Adamas Global Alternative Investment Management Inc. ("**Manager**"), an exempted company incorporated with limited liability under the laws of the Cayman Islands on 5 January 2005 with registration number 143604.
7. The Investment Manager of the Company is Adamas Asset Management (HK) Limited, a company incorporated pursuant to the laws of Hong Kong.
8. The Petitioner is the sole participating shareholder of the Company, holding 100% of the economic interest in the Company. All of the voting shares are held by the Manager.

The Petitioner and its investment

9. The Petitioner was established pursuant to the Kuwaiti Amiri Order Promulgating Law No.61 of 1976 on Social Security (the "**Amiri Order**") as a Public Institution organized under the laws of the State of Kuwait having a legal personality and an independent budget. The petitioner is responsible for the implementation of the social security scheme provided for in the Amiri Order.
10. Between 2010 and 2014, the Petitioner made a number of cash subscriptions and one *in specie* asset subscription for shares in the Company, totalling US\$106,478,634.39.

The Company and its performance

11. In 2014, the Company was partly restructured such that substantially all of the Company's assets, valued at approximately US\$115,000,000, were transferred to Adamas Finance Asia Limited ("**AFAL**"), a company incorporated pursuant to the laws of the British Virgin Islands and listed on the Alternative Investment Market of the London Stock Exchange plc, in return for which shares in AFAL (representing approximately 75% of the issued share capital) were issued to a wholly-owned subsidiary of the Company, namely, Elypsis Solutions Limited (the "**2014 Restructuring**"). The Petitioner therefore holds, indirectly, approximately 75% of AFAL.

12. Since the 2014 Restructuring, the net asset value per share of the Company has deteriorated significantly from US\$1,053.08 in March 2016 to a low of US\$352.89 on 31 March 2018. The Petitioner has not been provided with an update on the net asset value of its investment since 31 March 2018. As of 31 March 2018, the Petitioner's shareholding in the Company was worth approximately US\$37,208,691.88. Neither the Company nor the Manager have provided a satisfactory explanation for the poor performance of the Company and its underlying investments.

The Petitioner's concerns regarding the 2014 Restructuring

13. There is no-one who remains in the employ of the Petitioner who was directly involved in or authorised the 2014 Restructuring. The Petitioner does not therefore understand the rationale for the 2014 Restructuring, nor does it consider that the Company derived any apparent benefit from the 2014 Restructuring. Of particular concern to the Petitioner is that the 2014 Restructuring appears to have been completed without any formal documentation between the Manager and the Petitioner and the former Director-General of the Petitioner, Fahad Al Rajaan, a Kuwaiti national, was involved in negotiating and approving the 2014 Restructuring.
14. The Public Prosecution in Kuwait filed criminal charges against Mr Al Rajaan in Kuwait in or around November 2015 alleging that Mr Al Rajaan is responsible for the misappropriation and embezzlement of Kuwaiti state funds at the time he was employed as the Director-General of the Petitioner between 14 January 1984 and 30 January 2014. The Petitioner understands that Mr Al Rajaan has been sentenced to a 10-year prison term *in absentia* and the government authorities in Kuwait have submitted an extradition request to the government of the United Kingdom to extradite Mr Al Rajaan to Kuwait in order to face the criminal charges in Kuwait. The extradition request remains pending as at the date of this Petition.

15. The Petitioner does not presently know whether Mr Al Rajaan's alleged criminal activities extend to his involvement with the Company and the 2014 Restructuring, but this is the subject of an ongoing investigation by the relevant government authorities in Kuwait, who have sought mutual legal assistance in Switzerland (where Mr Al Rajaan is understood to have substantial assets). The Petitioner understands from a notice it received from the Swiss Attorney General dated 27 January 2015 that:
- (a) in 2012, the Office of the Attorney General of Switzerland opened a criminal investigation against Mr Al Rajaan and his wife;
 - (b) the investigation remains ongoing and focusses on secret kickbacks paid to Mr Al Rajaan and his wife by financial institutions in which the Petitioner had invested; and
 - (c) Mr Al Rajaan has been charged with criminal mismanagement, misappropriation and money laundering and the Petitioner has been admitted as a private plaintiff in that action.

Background to the commencement of Voluntary Liquidation

16. In February 2018, the Petitioner wrote to the Company expressing its serious concerns with respect to the management and performance of the Company and requesting that the Company be immediately wound up under the supervision of independent liquidators.
17. Following a lengthy exchange of correspondence between the Company and the Petitioner, the Manager and the directors of the Company ultimately agreed on 14 November 2018 that the Company should be wound up under the supervision of independent liquidators.
18. On 6 December 2018, the Petitioner instructed its Cayman Islands counsel, Walkers, to write to the Company's Cayman Islands counsel, Ogier, attaching a form of written resolution which the Petitioner required the Manager to pass by 12pm on Monday, 10 December 2018, *inter alia*:
- (a) placing the Company into voluntary liquidation; and

- (b) irrevocably appointing David Griffin and Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203 (the "**Proposed JVLs**"), Cayman Islands as joint voluntary liquidators of the Company.
19. The Manager failed to pass the resolution by the time stated and Ogier instead wrote to Walkers on 12 December 2018 stating that the Manager was considering potential candidates for appointment as voluntary liquidators of the Company.
20. On 12 December 2018, Walkers wrote to Ogier stating that the Petitioner, as the sole shareholder with an economic interest in the Company, had selected the Proposed JVLs and required the Manager to immediately pass a written resolution appointing the Proposed JVLs.
21. Notwithstanding the Petitioner's demand that the Proposed JVLs be appointed, on 14 December 2018, the Manager passed written resolutions, *inter alia*: (i) winding up the Company; and (ii) appointing Russell Smith of BDO CRI (Cayman) Limited and Kenneth Yeo of BDO Financial Services Limited as joint voluntary liquidators ("**JVLs**") of the Company.

Requirement for Court Supervision

22. In the circumstances, due to the unexplained poor financial performance of the Company and its underlying investments, as well as the potential wrongdoing of Mr Al Rajaan and the ongoing criminal investigation in Kuwait, the Petitioner believes that the supervision of this Honourable Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors in accordance with section 131(b) of the Law. There are a number of reasons for this; specifically, that having a court-supervised process will:
- (a) allow the liquidators to carry out a comprehensive investigation into the Company's affairs;
 - (b) provide the liquidators with power to apply to the Court for an order to examine any relevant person (as defined in section 103(1) of the Companies Law) (a "**Relevant Person**") for the purpose of investigating the Company's affairs, including the identity of its shareholders;

- (c) provide the liquidators with power to apply to the Court to compel any Relevant Person to transfer or deliver up to the liquidators any property or documents belonging to the Company; and
 - (d) assist in the orderly realisation and distribution of the Company's assets.
23. On 14 December 2018, the Petitioner put the JVLs on notice of this application, which resulted in Walkers receiving correspondence on 17 December 2018 from Ogier on behalf of the Manager and Carey Olsen on behalf of the JVLs. The Petitioner instructed Walkers to respond to each of those letters on 17 December 2018.

Nomination of Joint Official Liquidators

24. The Petitioner nominates David Griffin and Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and John Batchelor FTI Consulting (Hong Kong) Ltd, Level 35 Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, for appointment as joint official liquidators of the Company.
25. Each of Messrs Griffin, Morrison and Batchelor is a qualified insolvency practitioner (as that term is defined in section 89 of the Companies Law) and consents to their appointment as a joint official liquidator of the Company.

Conclusion

26. In the premises, the Petitioners seek an order pursuant to section 131(b) of the Law that the liquidation of the Company continue under the supervision of the Court and that the Petitioners be appointed as joint official liquidators ("JOLs") of the Company

Your Petitioner therefore humbly prays that:

1. The winding up of the Company continue under the supervision of the Court.
2. David Griffin and Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and John Batchelor of FTI Consulting (Hong Kong) Ltd, Level 35 Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong be appointed as JOLs of the Company.

3. The JOLs shall not be required to give security for their appointment.
4. The JOLs be authorised to act jointly and severally.
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 Company and the winding up of its affairs.
6. The JOLs be authorised to exercise all the powers set out in Parts I and II of the Third Schedule of the Companies Law (as amended) and section 110(2) thereof without the further sanction of this Honourable Court.
7. The JOLs be at liberty to appoint such attorneys, counsel and/or 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;
8. No disposition of the Company'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 Law.
9. Subject to section 109(2) of the Companies Law (as amended) 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 Company for their own remuneration.
10. 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 Company as an expense of the liquidation.
11. The Petitioner's costs of and incidental to the Petition shall be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
12. The JOLs be at liberty to apply generally.

13. Such further and/or other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONERS WILL EVER PRAY ETC:

DATED the 18th day of December 2018

FILED the day of December 2018

Walkers

WALKERS

Attorneys-at-Law for the Petitioner

This petition is intended to be served on:

The Company at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

The Manager at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

The Cayman Islands Monetary Authority

NOTE: This Petition will be further served in accordance with any order of the Court requiring the Petitioner to do so.

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

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on _____ at _____.

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.