

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 188 OF 2019 ( )

BETWEEN:

CHINT ELECTRICS (HONG KONG) LIMITED  
(SUING ON BEHALF OF ITSELF AND ALL  
SHAREHOLDERS IN THE FIRST DEFENDANT, OTHER  
THAN THE THIRD AND FIFTH DEFENDANTS AND  
THEIR ASSOCIATES)



AND:

- (1) AMPNOVA CORPORATION
- (2) TERENCE TAN
- (3) YUQING XU
- (4) BAOYI TONG
- (5) IPV CAPITAL II HK LIMITED



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WRIT OF SUMMONS

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TO: AmpNova Corporation, PO Box 309 Ugland House, Grand Cayman KY1-1104.

Terence Tan, No. 28 Villa Riviera, 588 East Xulian Road, Shanghai, People's Republic of China.

Terence Tan, Room 2204, Platinum Building No. 233 TaiCang Road, Shanghai 200020, People's Republic of China.

Yuqing Xu, 12167 Kate Drive, Los Altos Hills, California, 94022, United States of America.

Baoyi Tong, Unit 26F, Bldg 3, 1 South Shoupakou Street, Xicheng District, Beijing, 100055, People's Republic of China.

Baoyi Tong, No. 1023, Building 13, Aiminli, Xicheng District, Beijing City, People's Republic of China.

IPV Capital II HK Limited, Room 1901, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.

IPV Capital II HK Limited, Room 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.

**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 the First Defendant, and within 28 days (or as otherwise ordered by the Court) after the service of this Writ on the Second to Fifth Defendants, counting the day of service, the Defendants must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or return the Acknowledgement 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        day of September 2019.

**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 Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

### **The Parties**

1. The Plaintiff is a company incorporated in Hong Kong on 15 March 2012 with its registered office at Flat/Rm 01, 21/F, Prosper Commercial Building, 9 Yin Chong Street, Kowloon, Hong Kong.
2. The Plaintiff is a shareholder of the First Defendant, AmpNova Corporation ("**ANC**").
3. The Second Defendant, Mr Terence Tan ("**Mr Tan**"), was at all material times:-
  - (a) a director of ANC;
  - (b) a director of the Fifth Defendant; and
  - (c) the Fifth Defendant's representative on the Board of the ANC.
4. The Third Defendant, Ms Yuqing Xu ("**Ms Xu**"), was at all material times:-
  - (a) a director of ANC; and
  - (b) a holder of 2,349,727 Series A preferred shares of ANC.
5. The Fourth Defendant, Mr Baoyi Tong ("**Mr Tong**"), was at all material times:
  - (a) a director of ANC;
  - (b) a director of AmpNova (HK) Limited ("**AmpNova HK**"), a company incorporated in Hong Kong on 26 March 2015.
6. The Fifth Defendant, IPV Capital II HK Limited ("**IPV Capital**"), is a company incorporated in Hong Kong on 21 January 2011 with its registered office at Room 1901, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.

### **ANC**

7. ANC was incorporated in the Cayman Islands on 6 January 2015, with its registered office at PO Box 309 Ugland House, Grand Cayman KY1-1104.

8. From 26 March 2015 to 31 January 2018, ANC held one share in AmpNova HK and was AmpNova HK's sole shareholder.
9. Until 31 January 2018, the share in AmpNova HK was ANC's only valuable asset.
10. AmpNova HK wholly owns AmpNova Co. Ltd. ("**AmpNova PRC**"), a company incorporated in the People's Republic of China ("**PRC**") on 8 May 2014, which has substantial business operations in the PRC. That business initially involved the design, rental and maintenance of electric vehicle batteries. Over time, the business developed into providing a profitable platform for the rental of electric vehicles.
11. The Plaintiff became a shareholder of ANC on 20 May 2015 (for 3,636,363 ordinary shares) and on 9 May 2017 (for 123,200 ordinary shares). In total, it has invested a total of RMB 60 million (approximately US\$8.75 million) into ANC.
12. As at 13 June 2017, ANC has issued 9,984,814 ordinary shares and 7,049,187 Series A of preferred shares.
13. The ordinary shareholders of ANC are as follows:
  - (a) the Plaintiff holds 3,759,563 ordinary shares, representing 37.65% of the issued shares;
  - (b) Mr Jianbin Wu ("**Mr Wu**") holds 1,557,251 ordinary shares, representing 15.60% of the issued shares;
  - (c) Zhixun Shen holds 454,000 ordinary shares, representing 4.547% of the issued shares;
  - (d) Feng Chen holds 454,000 ordinary shares, representing 4.547% of the issued shares;
  - (e) Chi Chen holds 454,000 ordinary shares, representing 4.547% of the issued shares;
  - (f) Mike Lin holds 180,000 ordinary shares, representing 1.803% of the issued shares;

- (g) Lei Yang holds 816,000 ordinary shares, representing 8.172% of the issued shares;
  - (h) Kangjie Li holds 1,230,000 ordinary shares, representing 12.319% of the issued shares; and
  - (i) Xindi Wu holds 1,080,000 ordinary shares, representing 10.816% of the issued shares.
14. The Series A preferred shareholders of ANC are:
- (a) IPV Capital holds 4,699,454 Series A preferred shares, representing 66.67% of the issued shares; and
  - (b) Ms Xu holds 2,349,727 Series A preferred shares, representing 33.33% of the issued shares.
15. The directors of ANC at all material times were as follows:
- (a) Mr Wu, who was the Chairman of ANC until October 2016, when Mr Tan became the Chairman. Mr Wu is also a holder of Ordinary Shares in ANC (see paragraph 13(b) above);
  - (b) Mr Tan, who is the Chairman and IPV Capital's representative on the Board of ANC;
  - (c) Ms Xu. Ms Xu is also a holder of Series A Preferred shares in ANC (see paragraph 14(b) above);
  - (d) Mr Tong, who became the CEO of ANC in October 2016; and
  - (e) Mr Guorong Wang ("**Mr Wang**"), who is the Plaintiff's representative at the Board of ANC.
16. At all material times the Second, Third, and Fourth Defendants (hereinafter referred to together as the "**Director Defendants**") owed ANC fiduciary and common law duties, including a duty:
- (a) of loyalty and fidelity to ANC;

- (b) to act *bona fide* in the best interests of ANC;
  - (c) to avoid situations in which they, or any of them, have or may have had any interest that conflicts with or might conflict with, their duties to ANC and the interests of ANC;
  - (d) to exercise their powers as directors of ANC only for the purposes for which they were conferred and not for any improper, ulterior or collateral purpose;
  - (e) to act in accordance with ANC's constitution; and
  - (f) to act with reasonable care and skill.
17. References below to breaches by the Director Defendants of their fiduciary duties are references to one or more of the fiduciary duties set out in subparagraphs 16(a) to (f) above.

#### **The Bridge Loan and Security**

18. On 18 August 2017, Mr Tong sent an email to all the directors of ANC (including Mr Tan, Ms Xu, Mr Wu and Mr Wang) stating that ANC required bridging finance by way of a loan. That email stated that:
- (a) ANC, instead of its operating PRC subsidiary, should take out the loan because IPV Capital only could provide a US Dollar loan and it would take a long time for a PRC entity to obtain the necessary PRC government approval for obtaining a US Dollar loan; and
  - (b) ANC would inject the cash obtained from the loan into the PRC subsidiary in order to pay salaries, purchase hardware for the implementation of the "*Internet of Vehicles*", and pay 30% of the amount required for the purchase of rental cars before a shopping festival scheduled for 11 November 2017.
19. Mr Tong asked in the same email if the directors would agree to ANC taking up a loan (the "**Proposed Loan**"), if the shareholders (who had nominated directors on the board, namely IPV Capital, Ms Xu, the Plaintiff) would participate in the Proposed Loan, and if so, the amount such shareholders would want to contribute. The email stated that the total amount of the Proposed Loan needed to be approximately RMB12 million (US\$1.8

million) and that IPV Capital had undertaken to provide US\$1 million of that sum. Further, it attached draft terms (in both Chinese and in English) entitled "Proposed Terms for Bridge Loan Financing" (the "**Proposed Terms**") specifying inter alia that:

- (a) the principal amount of the Proposed Loan was to be US\$1,800,000 in aggregate;
- (b) there would be a maturity date of six months from issue, extendable at the sole discretion of the Lead Investor (defined as IPV Capital or its affiliate);
- (c) interest on the Proposed Loan would be 12% per annum.

20. The Proposed Terms also referred to "security" to be given by ANC, being the entirety of ANC's valuable assets (i.e. its shareholding in AmpNova HK) as follows:

*"In exchange for the extension of the loan and secure [sic] the performance of the loan, the Company shall pledge 100% equity interests it holds in AMPNOVA (HK) LIMITED, the wholly-owned Hong Kong subsidiary of the Company, in favor of the Investors on a pro rata basis based on the amount of Principal.*

*The Company shall execute and deliver share charge documents in favor of the Investors in form satisfactory to the Lead Investor prior to utilization of the loan."*

### **The August 2017 Board Meeting**

21. On 22 August 2017, Mr Tong sent an email to all of the directors of ANC, (including Mr Tan, Ms Xu, Mr Wu and Mr Wang) purporting to call a meeting to be held at 9.30am (Beijing time) on 23 August 2017 for the stated purpose of deciding whether or not ANC should enter into the Proposed Loan.
22. In contravention of ANC's corporate governance requirements, the meeting was invalidly convened as Article 73 of ANC's Articles of Association requires 48 hours' notice to each director in order to convene a Board meeting.
23. Further, no resolution or resolutions relating to the Proposed Loan or otherwise were proposed in Mr Tong's email dated 22 August 2017.

24. On 23 August 2017, Mr Tan, Ms Xu, Mr Tong and Mr Wang's representative, Mr Zhengchao Huang ("**Mr Huang**"), attended the meeting that had been called. Mr Wu did not attend.
25. At that meeting, the directors were informed by Mr Tong that ANC needed cash for its operations and that IPV Capital was able to provide a loan to ANC. Despite the email dated 18 August 2017 (referred to at paragraph 18 above), no additional information was provided to the directors in advance of or during the meeting regarding ANC's need for financing by way of the Proposed Loan or otherwise and no explanation was given to the directors as to why the Proposed Loan was considered to be in ANC's best interests.
26. The minutes of the meeting on 23 August 2017 indicate that it was resolved by the board of ANC that:

*"The following financial arrangement of Bridge Loan between the Company and IPV as its shareholder be, and hereby is approved:*

<b>Borrower</b>	<b>Lender</b>	<b>Amount of Loan</b>	<b>Term of Loan</b>
AMPNOVA CORP.	IPV	US\$1,000,000	By 31 <sup>st</sup> Dec 2017

*the loan agreement or other relevant legal documents shall be duly executed and delivered by and between IPV and the Company which shall set forth any and all rights and obligations of parties related to the above financial arrangement.*

*Yuqing Xu (Susan) and Chint Electrics (Hong Kong) Limited, as the shareholders, shall confirm whether to share in this Bridge Loan to the Company and if so, how much, by 20<sup>th</sup> Oct (about 45 days) from the issuance of the facilities of IPV's loan to the Company."*

27. The Proposed Terms provided to the directors in advance of the meeting (referred to in paragraph 19 and 20 above) contemplated a loan of US\$1,800,000 and referred to the creation of security. The Proposed Terms expressly stated that "*The Company shall execute and deliver share charge documents in favour of the Investors in form satisfactory to the Lead Investor prior to the utilization of the loan*" (emphasis added). Further, the execution of a note purchase agreement, a promissory note and a share charge were included in the closing conditions set out in the Loan Note and the Proposed Terms. The

meeting minutes from 23 August 2017 refer to a loan for US\$1,000,000 (rather than US\$1,800,000 as stated under the Proposed Terms), but there is no reference to the share charge documents, nor was the issue of security ever raised or discussed with the directors. In the event, no pledge, share charge or any other security document was ever put to the board of directors of ANC for approval or entered into by ANC.

28. Further, Mr Tan, the Chairman of the meeting, and then a director of IPV Capital, failed to declare his conflict of interest arising out of such directorship.

#### **The Loan Note between ANC and IPV Capital**

29. On 11 September 2017, ANC entered into a loan note with IPV Capital dated 11 September 2017 (the "**Loan Note**"), whereby ANC agreed to borrow US\$1 million at an interest rate of 12% per annum (the "**Loan**") for a term expiring on 31 December 2017 (the "**Maturity Date**"). The Loan Note is governed by Hong Kong law. The Loan was expressed to be secured by ANC's only valuable asset, its shareholding in AmpNova HK. Article 8.4B2.(4) of the Memorandum and Articles of Association ("**M&AA**") of ANC (as further particularised at paragraph 55(a) below), required the approval of the board of ANC in writing to pledge an asset. That approval was never obtained. The Loan Note was signed by Mr Tong on behalf of ANC but was not signed by IPV Capital.
30. The Loan Note and the Proposed Terms expressly state that separate share charge documents would be executed. The Loan Note and Proposed Terms were not by themselves expected or understood to create valid and enforceable security over the Ampnova HK shares. The Plaintiff is not aware of any share charge documents ever being created or executed. In the absence of any share charge documents contemplated by the Loan Note, under Hong Kong law, no valid security has been granted to IPV Capital. Moreover, under Hong Kong law, a pledge cannot be created in respect of shares.
31. In the premises it is averred that no security interest, whether in favour of IPV Capital or otherwise, was created over the Ampnova HK shares.
32. The Plaintiff has no knowledge of the Loan ever having been paid to ANC. The Defendants will be put to strict proof that the Loan was paid to ANC.

## The Event of Default

33. On 11 December 2017, IPV Capital sent a letter signed by Mr Tan (at the time the Managing Partner and one of two Directors of IPV Capital and a Director of ANC) by email and courier to AmpNova, Inc, and to Mr Tong (the "**11 December Letter**"). The Plaintiff is unaware of how AmpNova, Inc fits within the AmpNova group structure.

34. This 11 December Letter stated that:

*"Ampnova has indicated that it will be unable to pay the Loan and Interest by the Maturity Date. Such non-payment would constitute an event of default which triggers IPV's rights under clause 6 of the Loan Note."*

35. Further, the 11 December 2017 Letter stated that if IPV Capital: *"did not receive a written response from AmpNova by [18 December 2017] or if AmpNova informs us in writing that it would not be able to pay the Loan and Interest by the Maturity Date, IPV will treat such actions as an event of default. In these circumstances, IPV will reserve its rights to accelerate the Maturity Date, terminate the Loan Note and seek remedies for breach of the Loan Note which includes enforcing the Pledge and commencing arbitration against AmpNova to recover IPV's losses"*.

36. The Loan Note states under the heading *"Event of Default, Remedies and Termination Rights"*:

*"Customary event of default and remedies provisions and termination rights. Investors may accelerate the Maturity Date upon occurrence of an Event of Default"*.

37. There was no "event of default" under the Loan Note that would have permitted IPV Capital to accelerate the Loan. As a matter of Hong Kong law, even if an event of default could be said to have occurred, there was no lawful or valid security created under the Loan Note.

38. Even if the Loan Note did operate to create lawful and valid security (which is denied) such security interest did not confer any right of foreclosure. As a matter of Hong Kong law, once the value of the Loan is repaid, to the extent that the value of the mortgaged property

exceeds the value of the Loan, the balance of the mortgaged property must be returned to the borrower.

39. The enforcement of the purported security over AmpNova HK (which at the time had net assets of at least approximately RMB30 million (approximately US\$4.37 million)) grossly exceeded the value of the Loan and yet no amount has been returned to ANC and the equity of redemption has yet to be extinguished.

### **The December 2017 Board Meeting**

40. On 28 December 2017, just over 3 months after the Loan Note was signed by Mr Tong and before the Maturity Date, Mr Tong sent an email to all the directors (including Mr Tan, Ms Xu, Mr Wu and Mr Wang) notifying them of a board meeting to be held on 30 December 2017 (the "**30 December Board Meeting**") at which it was proposed by Mr Tong that ANC should:
- (a) acknowledge that ANC would be unable to repay the Loan owed to IPV Capital;
  - (b) approve the transfer of AmpNova HK from ANC to IPV Capital pursuant to the Loan Note (the "**Transfer**");
  - (c) authorise and approve the execution and delivery of documents to effect the Transfer;
  - (d) call an extraordinary general meeting of ANC to adopt the matters stated above as ordinary resolutions.
41. Mr Huang (on behalf of Mr Wang), Mr Wu, Mr Tong, Mr Tan and Ms Xu attended the 30 December Board Meeting.
42. At that meeting, Mr Tong, Mr Tan and Ms Xu voted for the Transfer, thereby approving ANC transferring AmpNova HK, its sole asset, to IPV Capital.
43. At the meeting, Baoyi Tong stated that "*the Company had assets of RMB30 million on its books*" (approximately US\$4.37 million).
44. The Transfer had the effect of passing ANC's sole asset to one of its shareholders, IPV Capital, to the detriment and loss of all other members. The effect of approving the

Transfer was to destroy the entirety of the value of the ordinary shareholders' investments whilst permitting a single member, IPV Capital, to acquire AmpNova HK.

45. At the 30 December Board Meeting, Mr Huang and Mr Wu opposed the Transfer. Both Mr Huang and Mr Wu suggested alternatives to the Transfer, including extending the term of the Loan or ANC selling assets through an auction process to repay the Loan. However, these suggestions were not adopted.
46. Further, there was no discussion by the directors at the material time of how ANC might otherwise be in a position to repay the Loan to IPV Capital.
47. At the 30 December Board Meeting, Mr Wu pointed out that Mr Tan, as IPV Capital's Board representative, had a conflict of interest with respect to voting on the Transfer but Mr Tan nevertheless, without declaring his interest (and thus breaching ANC's M&AA as particularised at paragraphs 61 to 64 below), voted on the resolutions and voted for the Transfer.
48. A form of the Share Sale and Purchase Agreement was approved during the 30 December Board Meeting. It is not known whether the Share Sale and Purchase was ever executed. Even if the Loan Note operated to create lawful and valid security (which is denied), as stated at paragraph 38, IPV Capital had no right to appropriate the AmpNova HK shares in satisfaction of any debt.

#### **Proposed Extraordinary General Meeting**

49. On 30 December 2017, Mr Tong emailed notice of an extraordinary general meeting ("**EGM**") to all the shareholders, giving notice of an EGM to be held on 10 January 2018 for the shareholders to, amongst other things, approve the Transfer.
50. On 10 January 2018, Mr Wu, Feng Chen and Mike Lin, with an aggregate voting power of 12.87% of the ordinary shares entitled to vote, attended the EGM. Neither IPV Capital nor Ms Xu, holders of Series A preferred shares, was present in person or by proxy.
51. In the premises, as particularised at paragraphs 59 and 60 below, the EGM held on 10 January 2018 was inquorate and no business could be transacted.

52. After 10 January 2018, no further EGM was called or held to consider or approve the Transfer.
53. Without the Plaintiff's knowledge, on 31 January 2018, ANC went ahead and transferred the single share in AmpNova HK (i.e. ANC's entire equity interest in AmpNova HK) to IPV Capital, without shareholder approval.
54. On 31 January 2018, Mr Tong and Mr Tan were appointed as directors of AmpNova HK.

### PARTICULARS OF BREACH

#### **Breaches by the Director Defendants regarding the entry into the Loan Note and the creation of the pledge**

55. In causing ANC to enter into the Loan Note and by attempting to pledge ANC's sole valuable asset in favour of IPV Capital (as pleaded at paragraphs 18 to 32 above), the Director Defendants acted unlawfully in causing ANC to breach its Articles of Association ("**M&AA**") and in breach of their duties as directors of ANC.

(a) Breach of Article 8.4B 2.(4) of the M&AA

(i) Article 8.4B 2.(4) of ANC's M&AA provide that:

*"2. **"Acts of the Group Companies Requiring Approval of Series A Director.** Regardless of anything else contained herein or in the Charter Documents of any Group Company, no Group Company shall take, permit to occur, approve, authorize, or agree or commit to do any of the following, and each Party shall procure each Group Company not to, and the shareholders of the Company shall procure the Company not to, take, permit to occur, approve, authorize, or agree or commit to do any of the following, whether in a single transaction or a series of related transactions, whether directly or indirectly, and whether or not by amendment, merger, consolidation, scheme of arrangement, amalgamation, or otherwise, unless approved in writing by the Board, including the affirmative vote from Series A Director in advance:*

*(4) any matter in which any Group Company pledges its assets or acts as a guarantor"*

(ii) The Loan Note provides that the security for the Loan would be the pledge of ANC's only asset, its entire shareholding in AmpNova HK. Neither the pledge nor any share charge documents were referred to or approved by the directors of ANC at the meeting held on 23 August 2017 or otherwise. As the attempted creation of the pledge was not approved in writing by the Board, the Director Defendants breached Article 8.4 2.(4) of the M&AA.

(b) Breach of Article 8.4B 3.(3) of ANC's M&AA

(i) Article 8.4B 3.(3) of ANC's M&AA provide that:

*"3. **Acts of the Group Companies Requiring Approval of Board.** Regardless of anything else contained herein or in the Charter Documents of any Group Company, no Group Company shall take, permit to occur, approve, authorize, or agree or commit to do any of the following, and each Party shall procure each Group Company not to, and the shareholders of the Company shall procure the Company not to, take, permit to occur, approve, authorize, or agree or commit to do any of the following, whether in a single transaction or a series of related transactions, whether directly or indirectly, and whether or not by amendment, merger, consolidation, scheme of arrangement, amalgamation, or otherwise, unless approved in writing by the Board:*

...

*(3) any transaction between any Group Company and any of its shareholders, directors, officers, employees or other insiders and any of their family members of affiliates other than on an arms-length basis and upon prior full disclosure in writing to shareholders"*

(ii) The purported pledge was a transaction between ANC and its majority Series A preferred shareholder, IPV Capital. The terms of the purported pledge were not disclosed in writing or at all to the shareholders. Further, there was no written approval by the directors of ANC of the pledge. The attempted creation of the pledge was in breach of Article

8.4B 3.(3) and in entering into it the Director Defendants caused ANC to be in breach of its M&AA.

(iii) IPV Capital, as the majority Series A preferred shareholder and the Director Defendants, had actual knowledge of the provisions of the M&AA including the requirements for full disclosure in writing to all shareholders and approval in writing by the board of ANC for any related party transactions. Although entry into the Loan was approved by the board of directors of ANC, there was no approval in writing or otherwise for the creation of the pledge.

(c) Breach of Article 63 of ANC's M&AA

(i) Further, Article 63 of ANC's M&AA provide that:

*"Subject to the provisions of the Statute, the Memorandum and these Articles and to any directions given by Special Resolution, the business of the Company shall be managed by or under the direction of the Directors who may exercise all the powers of the Company; provided, however, that the Company shall not carry out any action inconsistent with Article 8..."*

56. The Directors are obliged to act in accordance with ANC's constitution and, by Article 63 of the M&AA, are specifically prohibited from acting in a manner inconsistent with the protective provisions in Article 8 (including, inter alia, Article 8.4B(3)(3)). In causing ANC to create a pledge in favour of IPV Capital in a manner which contravened Article 8.4B and was not in the best interests of ANC, the Director Defendants acted in breach of ANC's constitution and in breach of their duties to ANC.

#### **Breaches relating to the approval of the Transfer**

57. In approving the Transfer and related resolutions (as pleaded at paragraphs 33 to 48 above), the Director Defendants acted in breach of the M&AA, in bad faith and in breach of their fiduciary duties and contrary to the best interests of ANC as further particularised below.

(a) Bad Faith

- (i) In the absence of written approval for the pledge by the board of directors of ANC, as required by ANC's M&AA, the Director Defendants wrongfully sought to give effect to the pledge by approving the Transfer which was to the benefit of IPV Capital and detriment of ANC and its other shareholders.
  - (ii) The Director Defendants wrongfully proceeded on the basis that effective security had been granted and that an event of default had occurred under the Loan Note thus approving the Transfer. In doing so, they acted in bad faith and in a manner that was contrary to the best interests of ANC.
- (b) Duty to act with reasonable care and skill
- (i) The Director Defendants failed to exercise the requisite degree of skill and care required of them and acted in breach of duty in approving the Transfer as:
    - (1) The entry into the Loan Note was carried out in breach of ANC's M&AA as explained above;
    - (2) even if the Director Defendants had the corporate authority to enter into the Loan Note (which is denied), no security was in fact created as a matter of Hong Kong law;
    - (3) even if the Loan Note was a lawful instrument (which is denied) and ANC had insufficient cash to repay the Loan by the Maturity Date of 31 December 2017, they should have, and were obliged to, consider alternative options available before transferring away ANC's sole asset. In fact, no alternative repayment options for the Loan Note were approved by the directors;
    - (4) Mr Huang and Mr Wu made proposals at the Board meeting held on 30 December 2017, as referred to in paragraph 45 above. However, the Director Defendants failed to approve any of them, nor did they explore any alternative options for the repayment of the Loan Note.

58. By reason of the said breaches of duty by the Director Defendants the Plaintiff has suffered loss and damage.

### **Breaches relating to the proposed Extraordinary General Meeting**

59. Article 38 of ANC's M&AA provide that:-

*"a majority of the aggregate voting power of all of the Ordinary Shares entitled to notice of and to attend and vote at such general meeting (including the Preferred Shares on as converted basis) and the Majority Preferred Holders together present in person or by proxy or if a company or others non-natural person by its duly authorised representative shall be a quorum. Subject to Article 41, no business shall be transacted at any general meeting unless a quorum is present."*

60. In not putting the Transfer to the members of a validly convened meeting, the Director Defendants acted in breach of Article 38 of ANC's M&AA.

### **Mr Tan's conflict of interests**

61. As a director of ANC, Mr Tan had a duty to ensure that his personal interests and position as a director of IPV Capital did not conflict with his duty to ANC and that he did not act in the interest of IPV Capital to the detriment of ANC, specifically in voting upon:

- (a) ANC's entry into a transaction to which IPV Capital was the counterparty, and
- (b) the Transfer of ANC's sole asset to IPV Capital.

62. Article 81 of ANC's M&AA provide that:

*"In addition to any further restrictions set forth in these Articles, no Person shall be disqualified from the office of Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director shall be in any way interested (each, an **"Interested Transaction"**) be or be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such Interested Transaction by reason of such Director holding office or of the fiduciary relation thereby established, and any such which that director has an interest (and if he votes his vote shall be counted) and shall be*

*counted towards a quorum of those present at such meeting, in each case so long as the material facts of the interest of each Director in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith to and are known by the other Directors. A general notice or disclosure to the Directors or otherwise contained in the minutes of a meeting or a written resolution of the directors or any committee thereof that a Director is a member of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure under this Article 81."*

63. Mr Tan failed to disclose the fact that he was a director of IPV Capital at the Board meetings held on 23 August 2017 and 30 December 2017. Mr Tan voted on the board resolutions concerning the Loan Note and the Transfer without declaring his interest. Mr Tan did not provide the requisite disclosure as required under Article 81 of the Articles of Association. In doing so Mr Tan acted in bad faith and in breach of his duties to ANC.
64. By reason of Mr Tan's said breaches of duty the Plaintiff has suffered loss and damage.

#### **Breach by IPV Capital**

65. The Transfer was an attempt by the Director Defendants to enforce the purported security under the Loan Note. As no security was created, there was no lawful basis for the Transfer.
66. IPV Capital received the Transfer of ANC's only valuable asset with the knowledge and assistance of Mr Tan (a director of ANC and one of two IPV Capital directors), who wrongfully sent the 11 December Letter on IPV Capital's behalf, and was present and voted (contrary to ANC's interests) at the board meetings of ANC held on 23 August 2017 (when the Loan Note was entered into) and on 30 December 2017 (when the directors of ANC resolved to make the Transfer).
67. IPV Capital has knowingly received an asset to which it was not entitled and has caused loss and damage to the Plaintiff.
68. Even if the Loan Note operated to create lawful and valid security (which is denied), as stated at paragraph 38, IPV Capital had no right to appropriate the AmpNova HK shares in satisfaction of any debt.

## **Indemnity**

69. The Plaintiff claims an indemnity from ANC in respect of the costs of these proceedings brought for its benefit.

### **AND THE PLAINTIFF claims:**

- (1) A declaration that the creation of the security, the Transfer, and any subsequent dealings by IPV Capital with respect to AmpNova HK are null and void;
- (2) A declaration that ANC is the sole legal and beneficial owner of AmpNova HK and that since 31 January 2018 IPV Capital has held the shares of AmpNova HK on trust for ANC;
- (3) An order that IPV Capital execute or cause to be executed all documents necessary for the transfer of the shares of AmpNova HK to ANC and deliver such documents to the Plaintiff within 7 days of the date of the order;
- (4) An order that in the event that IPV Capital does not comply with the order set out in paragraph (3) above, an appropriate person be authorised on the written request of the Plaintiff, to execute without further order, an instrument of transfer of the shares of AmpNova HK to deliver the same to the Plaintiff;
- (5) A declaration that any sums held by IPV Capital (or by any person on behalf of IPV Capital) in respect of dividends, interests and payments received since 31 January 2018 from AmpNova HK are held for and on behalf of ANC;
- (6) An order that IPV Capital do pay to ANC an amount equal to the sum referred to in paragraph (5) above;
- (7) Damages and all necessary accounts of profits and inquiries from the Second to Fifth Defendants;
- (8) An order that ANC do indemnify the Plaintiff in respect of the costs and expenses incurred by it in these proceedings;
- (9) An order that the Second to Fifth Defendants pay the costs of these proceedings; and

(10) Such further or other relief as the Court thinks fit.

Dated this 27<sup>th</sup> day of September 2019

*Walker*

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**WALKERS**

Attorneys-at-law for the Plaintiff

This **WRIT OF SUMMONS** was issued by Walkers, Attorneys-at-Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands, for the Plaintiff whose address for service is care of its said Attorneys-at-Law.