

GENERAL INDORSEMENT

Background

1. Adamas Asia Strategic Opportunity Fund Limited (in Official Liquidation) (the "**Plaintiff**") was incorporated in the Cayman Islands on 10 November 2005 as an exempted limited company under the Companies Act (as amended) (the "**Companies Act**") with registration number 157778.
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 10415 under the Mutual Funds Act (as revised).
3. On 1 August 2007, the Defendant was appointed as director of the Plaintiff and on 30 June 2019, the Defendant resigned as a director of the Plaintiff.
4. At all material times to which this Writ relates (leading up to and immediately following the entry by the Plaintiff's wholly owned subsidiary, Heracles, into the Heracles Loan Agreement and the advancement of US\$2,000,000 by the Plaintiff to a related fund, Asia Private Credit Fund Limited (in Official Liquidation) ("**APCF**") (as each such terms is defined below)) the Defendant was a director of the Plaintiff.

Management Agreement

5. Pursuant to the Amended and Restated Memorandum and Articles of Association of the Plaintiff dated 21 December 2005 (the "**Articles**"), the Directors of the Plaintiff "*may appoint any person, firm or corporation to act as the [Former] Manager of the [Plaintiff's] business affairs or in respect of the Participating Shares...*" and "*may entrust to and confer upon the [Former] Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions including the right to remuneration payable by the [Plaintiff] and with such powers of delegation and such restrictions as they think fit.*"
6. Pursuant to a written agreement dated on or around 14 December 2005 entered into between the Plaintiff and Adamas Global Alternative Investment Management Inc. (the "**Former Manager**"), the Plaintiff engaged the Former Manager as manager of the Plaintiff's assets (the "**Management Agreement**").

7. The Former Manager is an exempted company incorporated with limited liability under the laws of the Cayman Islands on 5 January 2005 with registration number 143604.
8. The Plaintiff understands that Mr Barry Lau Wang Chi and Mr Paul Heffner are the majority beneficial owners of the Former Manager.
9. The terms of the Management Agreement are described in the Private Placement Memorandum dated 22 May 2013 (the "**PPM**") as follows:
 - (a) *"[u]nder the Management Agreement, the [Former] Manager has agreed to act as manager of the Fund, subject to the overall control and supervision of the Directors, and the [Former] Manager has full discretion to manage and invest the assets of the Fund...";*
 - (b) *"the Fund appointed the [Former] Manager, subject to the control of and review by the Directors, to manage the Fund and to appoint the [Former] Investment Manager";*
 - (c) *"[t]he Management Agreement will continue in force until terminated by either party on 90 days' notice in writing to the other party. It may be terminated forthwith by either party on immediate written notice if the other party commits any material breach of its obligations and fails to remedy the breach within 30 days of receipt of written notice requiring the same, or if the other party is dissolved or otherwise enters into insolvency proceedings";*
 - (d) *"[t]he [Former] Manager will not be liable for any loss suffered by the Fund in connection with the performance by the [Former] Manager of its obligations under the Management Agreement in the absence of fraud, wilful default or negligence on the part of the [Former] Manager. The Fund has agreed to indemnify the [Former] Manager against all liabilities incurred by it in the performance of its obligations and duties under the Management Agreement other than liabilities arising out of the fraud, wilful default or negligence on the part of the [Former] Manager"; and*
 - (e) *"[t]he Directors, the [Former] Manager, the [Former] Investment Manager may from time to time act as manager, investment manager in relation to, or be otherwise involved in, other funds, established by parties other than the Fund*

which have similar objectives to those of the Fund. It is therefore, possible that any of them may, in the course of business, have potential conflict of interest with the Fund. Each 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. In addition, subject to applicable law, any of the foregoing may deal, as principal or agent, with the Fund, provided that such dealings are carried out as if effected on normal commercial terms negotiated on an arm's length basis".

10. The PPM also describes certain of the fees and expenses payable by the Plaintiff, as follows:

- (a) the Management Fee: *"[t]he [Former] Manager is entitled to receive from the Fund a Management Fee of one twelfth (1/12) of 1.5 per cent per calendar month of the Net Asset Value of the Fund as at the last Valuation Day each month, payable in arrears. The [Former] Manager may waive all or part of the Management Fee";* and
- (b) the Performance Fee: *"[t]he [Former] Manager is also entitled to receive a Performance Fee from the Fund calculated on a Share-by-Share basis in respect of each calendar month in each year (a "Calculation Period"). For each Calculation Period, the Performance Fee in respect of each Share will be equal to 10 per cent of the appreciation in the Net Asset Value per Share during the Calculation Period above the Base Net Asset Value per Share of that Share. The Base Net Asset Value per Share is the greater of the Net Asset Value per Share at the time of issue of that Share and the highest Net Asset Value per Share in respect of which a Performance Fee is payable as at the end of any previous Calculation Period (if any) during which such Share was in issue".*

11. The PPM further provides that:

- (a) the "Investment Objective" of the Plaintiff is *"to achieve a superior risk adjusted rate of return";*
- (b) the "Investment Policy" of the Plaintiff is described as:

"The Fund is a fund of funds. The assets of the Fund are invested in a diversified portfolio of listed and unlisted Underlying Funds which have a focus on Pan-Asia and which use non-traditional and alternative asset management strategies. The

Underlying Funds in which the Fund will invest are commonly referred to as hedge funds and may also include funds of hedge funds. Up to 50 per cent of the Net Asset Value of the Fund at any time may be invested in new or recently established Underlying Funds which, or the Sub-Managers of which, have short ("early stage") or no ("start-up") track record.

The [Former] Manager seeks to achieve the investment objective by investing Underlying Funds managed by a wide variety of Sub-Managers ... There are no restrictions on the types of investment strategies employed by the Underlying Funds in which the Fund may invest.

At the discretion of the [Former] Manager, the assets of the Fund may be invested in over-the-counter (OTC) or exchange-traded derivatives, including but not limited to currency options / futures and index options / futures, for the purposes of hedging against the Fund's exposure to currency risk or country / market specific risk. The Fund may also invest into exchange traded funds for the purposes of hedging against the Fund's exposure to either country or specific market risk.

The Fund may also hold cash on deposit pending investment and to meet redemptions..."; and

- (c) the "Investment Restrictions" are described as follows: "[t]he [Former] Manager may from time to time impose such investment restrictions as they it considers appropriate or as are required in order to comply with the laws and regulations of the countries in which the Shares are distributed".

12. The Plaintiff understands that the material terms of the Management Agreement are as follows:

- (a) the Former Manager shall owe duties to the Plaintiff in its capacity as manager, including, but not limited to, an obligation to appoint and delegate its powers to the Former Investment Manager to manage and invest the Plaintiff's assets and investments in pursuit of the Investment Objective and subject to the Investment Restrictions described in the PPM and the overall control and supervision of the Directors;

- (b) representations and warranties made by the Former Manager to the Plaintiff, including, but not limited to, that the Defendant in connection with the execution of its obligations under the Management Agreement has and will continue to comply with all laws, rules and regulations;
- (c) the Plaintiff shall pay the Defendant management and performance fees for its services; and
- (d) in connection with the execution of its obligations under the Management Agreement, the Former Manager shall have regard to its obligations to the Plaintiff and ensure that any conflicts are resolved fairly.

Investment Management Agreement

- 13. Pursuant to a written agreement dated 27 February 2013 entered into between the Former Manager and Adamas Asset Management (HK) Limited ("**AAMHK**" or the "**Former Investment Manager**"), the Former Manager engaged the Former Investment Manager to manage and invest the assets of the Plaintiff (the "**Investment Management Agreement**"). The Former Investment Manager is a company incorporated under the laws of Hong Kong.
- 14. The Plaintiff understands that Mr Lau Wang Chi Barry and Mr Paul Heffner are the majority beneficial owners of the Former Investment Manager.
- 15. The Investment Management Agreement sets out, amongst other things, that:
 - (a) Clause 4.1 (Duties of the Investment Manager): the Former 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 [Former] 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 [Former] Investment Manager and otherwise act as the [Former] Investment Manager judges appropriate in relation to the management and investment of the [assets and investments of the Plaintiff]";

- (c) Clause 4.5 (Duties of the Investment Manager): *"The [Former] Investment Manager shall... also provide the following services... (D) keeping or causing to be kept such books, records and statements as shall be necessary to give a complete record of all transactions with the [Former] Investment Manager carries out for the account of the [Former] Manager and the [Plaintiff], which the [Former] Manager or the [Plaintiff], and the persons authorised in writing by the [Former] Manager and/or the [Plaintiff] as applicable, shall be entitled to inspect at all reasonable times";*
- (d) Clause 12.1 (Fees and Expenses): *"the [Former] Manager shall pay to the [Former] Investment Manager... by way of remuneration for its services under this [Investment Management Agreement] an investment management fee of such amount and with such frequency as may be agreed between the [Former] Manager and the [Former] Investment Manager from time to time..."; and*
- (e) Clause 15.1 (Conflicts of Interest): *"The [Former] Investment Manager will, at all times, have regard in such event to its obligations to the [Former] Manager and the [Plaintiff] and will endeavour to ensure that such conflicts are resolved fairly."*

Heracles Loan Agreement

16. On 5 January 2015, the Plaintiff's wholly owned subsidiary, Heracles Solutions Limited ("**Heracles**"), a limited liability company incorporated in the British Virgin Islands with company registration number 1651073, entered into a loan agreement, as lender, with Right Legendary Limited ("**RLL**"), a limited liability company incorporated in the British Virgin Islands with company registration number 1888990, as borrower (the "**Heracles Loan Agreement**").

17. The material terms of the Heracles Loan Agreement are as follows:
- (a) Loan Amount: The principal amount of the loan is US\$2,000,000 (the "**Principal Amount**");
 - (b) Interest: Interest is calculated at "10% per annum (the "**Interest**"), on an Actual/360 basis, and to be settled at the end of each June and December";
 - (c) Drawdown Date: "On or before 9 Jan 2015";
 - (d) Repayment Date: "[RLL] shall repay the Principal Amount and all Interest accrued thereon 8 Jan 2017 (the "**Final Maturity**)";
 - (e) Default: "Shall [RLL] fail and/or refuse to repay the Principal Amount and all Interest accrued thereon by the date of Final Maturity, [RLL] shall, in addition to the repayment of the Principal Amount and the Interest accrued thereon forthwith, pay to [Heracles] a default interest to be accrued on the Principal Amount or such outstanding part thereof at the rate of 1% per month until full and final repayment of the Principal Amount or such outstanding part thereof";
 - (f) Governing Law: "The laws of Hong Kong SAR";
 - (g) Dispute Resolution: "All disputes in relation to or arising out of this Loan Agreement shall be resolved by litigation in the courts of Hong Kong SAR and for this purpose, the [RLL and the Plaintiff] irrevocably submit to the jurisdiction of the courts of Hong Kong SAR;
 - (h) Declaration 7: "[RLL] shall use all sums borrowed by it for (a) in the process of working capital in Asia Private Credit Fund Limited, or (b) any other purposes subjected to further written approval of both [RLL and the Plaintiff]";
 - (i) Declaration 11: "[RLL] shall perform all duties and discharge all responsibilities of and under this [Heracles] Loan Agreement, including but not limited to the full repayment and discharge of the Principal Amount, all Interest accrued thereon and/or the Total Indebtedness (whichever shall be appropriate)";
 - (j) Schedule 1, Clause 3 (Additional Terms of the Loan): "In the event that... (i) [RLL] fails to repay the Loan and all Interest accrued or, alternatively, the Total Indebtedness (as the case may be) on or before Final Maturity; or... (iii) [RLL]

*and/or any member of the Group becomes insolvent or unable to repay its debt as and when they fall due; or... (vii) legal proceedings (which shall include arbitration proceedings) have been initiated (that is, issued) against [RLL] and/or any member of the Group under any applicable bankruptcy, composition or insolvency law or scheme of arrangement; or (viii) a winding-up petition is presented against and/or served on [RLL] and/or any member of the Group; or... (xiii) a distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any part of the property, assets or revenues of [RLL] and/or any member of the Group... then [Heracles] may at its sole discretion claim for the Principal Amount, Interest, costs and other charges incidental to the Loan Agreement and/or the Loan (the "**Total Indebtedness**") from [RLL]. For any avoidance of doubt, Interest shall continue to accrue on the Principal Amount until such time as the Principal Amount is fully repaid and/or discharged";*

(k) Schedule 1, Clause 4 (Additional Terms of the Loan): *"No waiver of any of the Lender's rights or powers or any consent by the Lender shall be valid unless signed by the Lender in writing"; and*

(l) Schedule 1, Clause 10 (Additional Terms of the Loan): *"Further but without prejudice to other provisions herein, the Borrower shall (with the object and intention of affording to the Lender a full indemnity for all amounts actually disbursed or incurred by the Lender pursuant to the terms herein) pay or reimburse to the Lender, on demand:*

(a) All costs, charges and expenses incurred and all payments made by the Lender in the lawful exercise of the powers hereby conferred upon the Lender (together with all remuneration payable to the Lender); and

(b) All reasonable expenses (including legal expenses on an indemnity basis) incurred by the Lender in suing for or recovering any sum due from the Borrower to the Lender hereunder or in connection with the protection or enforcement of the Lender's rights or interests herein".

18. On 7 January 2015, the Plaintiff paid US\$2,000,000 to Heracles' bank account with Standard Chartered.

19. Immediately upon receipt of such funds, Heracles transferred US\$2,000,000 to APCF, which was received by APCF into its Standard Chartered Bank account (Account No. 368-1 130837-1) on 9 January 2015 (the "**APCF Loan**").
20. On 13 January 2015, APCF paid a dividend of US\$2,000,000 to its sole participating shareholder, The Public Institution for Social Security of the State of Kuwait ("**PIFSS**"). PIFSS is also a participating shareholder of the Plaintiff.
21. From January 2015 to April 2016, APCF's NAV statements record the APCF Loan (being the loan from Heracles to APCF); and from May 2016 onwards, the outstanding amount owed to Heracles in respect of the APCF Loan was not recorded in APCF's NAV statements. During this period, Heracles' books and records reflected the US\$2,000,000 loan from Heracles to RLL (pursuant to the Heracles Loan Agreement).
22. The Plaintiff (acting by its board of directors) has (indirectly via Heracles, a wholly owned subsidiary of the Plaintiff) funded the conduct and operation of APCF. In particular, the US\$2,000,000 transferred by the Plaintiff to Heracles, and subsequently advanced by Heracles to APCF was utilised to pay a dividend in the amount of US\$2,000,000 to APCF's sole participating shareholder, PIFSS. Additionally, the Plaintiff (acting by its board of directors) has improperly incurred liability to the Former Manager in respect of management and/or performance fees under the terms of the Management Agreement arising from the APCF Loan and/or the Heracles Loan Agreement.
23. Neither the Plaintiff nor Heracles has received any monies pursuant to the terms of the Heracles Loan Agreement or in respect of the APCF Loan.

AND THE PLAINTIFF claims:

- (a) loss and damages for breach of fiduciary duty and/or breach of duty by the Defendant in his capacity as director of the Plaintiff. Such breaches include, but are not limited to:
 - (i) the Defendant failed to act *bona fides* in the best interests of the Plaintiff in causing the Plaintiff to advance funds (directly or indirectly) to APCF (directly or indirectly), including pursuant to the Heracles Loan Agreement, which:
 - (1) had no commercial purpose;

- (2) afforded no benefit to the Plaintiff;
 - (3) which resulted in the incurrence of performance and/or management fees; and
 - (4) resulted in incurrence of liability to the Former Manager in respect of performance and/or management fees;
- (ii) the Defendant failed to exercise due care, skill and diligence in supervising the delegation of management and investment management obligations to the Former Manager and, in turn, the Former Investment Manager:
- (1) the Defendant failed to ensure that the Former Manager and the Former Investment Manager complied with the Investment Objectives and Investment Restrictions as set out in the PPM, the Management Agreement and the Investment Management Agreement (as applicable); and
 - (2) the Defendant failed to properly protect the interests of the Plaintiff in connection with the advancement of funds (directly or indirectly) to APCF, including pursuant to the Heracles Loan Agreement, in failing to ensure that the Former Manager and/or Former Investment Manager procure appropriate security or other arrangements and in failing to take steps to enforce and/or recover the sums advanced;
- (b) loss and damages arising in tort for inducing the breach of the Management Agreement by the Former Manager;
- (c) loss and damages arising in tort for inducing the breach of the Investment Management Agreement by the Former Investment Manager;
- (d) interest pursuant to Section 34 of the Judicature Act (2007 Revision) on such damages as may be awarded to it at such rate and for such period as this Honourable Court thinks fit;
- (e) such further or other relief as this Honourable Court thinks fit; and

(f) costs.

DATED this 4th day of January 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 CAUSE NO: OF 2021 ()

BETWEEN: ADAMAS ASIA STRATEGIC OPPORTUNITY
FUND LIMITED (IN OFFICIAL LIQUIDATION) PLAINTIFF

AND: TAKESHI KADOTA
DEFENDANT

**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 given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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

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.