



IN THE GRAND COURT OF THE CAYMAN ISLANDS FINANCIAL SERVICES DIVISION

FSD CAUSE NO: OF 2021 ()

BETWEEN: ASIA PRIVATE CREDIT FUND LIMITED (IN OFFICIAL LIQUIDATION)

AND: INFINITUS MANAGEMENT COMPANY LIMITED

WRIT OF SUMMONS

TO: INFINITUS MANAGEMENT COMPANY LIMITED, c/o Corporate Registrations Limited, Sea Meadow House, P.O. Box 116, Road Town, Tortola, VG1110, British Virgin Islands

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 9th of February 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

Background

1. Asia Private Credit Fund Limited (in Official Liquidation) (the "**Plaintiff**") 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 Plaintiff was assigned company number 236963 and registered with the Cayman Islands Registrar of Companies on 9 February 2010.
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 562026 under the Mutual Funds Law (as revised).
3. The Plaintiff engaged Adamas Global Alternative Management Inc. (the "**Manager**") as manager of the Plaintiff pursuant to a written agreement dated 27 February 2013; and the Plaintiff engaged Adamas Asset Management (HK) Limited (the "**Investment Manager**") as investment manager of the Plaintiff pursuant to a written agreement dated 27 February 2013.
4. As at the date of the Consultancy Agreement (as defined below), Gen2 Partners Investment Management Limited acted as manager of the Plaintiff (before being replaced by the Manager on 27 February 2013) (the "**Former Manager**") and Gen2 Partners Limited acted as investment manager of the Plaintiff (before being replaced by the Investment Manager on 27 February 2013) (the "**Former Investment Manager**").

The Consultancy Agreement

5. Pursuant to a written agreement dated 1 September 2012 entered into between the Plaintiff and the Defendant (as amended pursuant to the supplement to the consultancy agreement dated 1 April 2013 (the "**Supplement**")), the Former Manager caused the Plaintiff to engage the Defendant as investment consultant to the Plaintiff (the "**Consultancy Agreement**").
6. The Defendant was incorporated as a company with limited liability under the laws of the British Virgin Islands on 13 August 2012, with registration number 1728305. The

Defendant changed its name from Congress Global Investments Limited to Infinitus Management Company Limited on 21 November 2012.

7. The Plaintiff understands that the Defendant is an affiliate of the Adamas group. In particular, the Plaintiff understands that:
 - (a) the late Mr Paul Lincoln Heffner appears to have made payments of professional fees on behalf of the Defendant that were reimbursed to him. Mr Heffner was a former director of the Plaintiff (having resigned on 8 March 2013) and Mr Heffner together with Mr Barry Lau Wang Chi are the majority beneficial owners of the Manager and the Investment Manager of the Plaintiff;
 - (b) Ms Sandy Huang Chian, a director of the Defendant since 16 December 2013, is also a director and/or officer of a number of other entities affiliated with the Adamas group and certain of its underlying investments, including Reality Virtual Limited, Right Legendary Limited and BRJ China Credit Fund; and
 - (c) in the period between April 2011 and June 2017, the Defendant held shares in the Plaintiff. The Defendant's shareholding fluctuated over time – between c. 0.96% in April 2011 and c. 2.52% in June 2017.

8. The material terms of the Consultancy Agreement are as follows:
 - (a) Clause 2.1 (*Appointment of Consultant*): *"The Fund appoints the Consultant from the date of this Agreement to act as a non-exclusive consultant in relation to the provision of the Services to the Fund, and the Consultant accepts that appointment..."*;
 - (b) Clause 3.1 (*Consultant's Services*): *"The Consultant will from time to time provide investment consulting services to the Fund. In particular, it agrees to do the following in relation to the Fund:*
 - (a) *introduce potential investments to the Fund for the Fund's own evaluation and assessment for the purposes of investment in the Fund (where the Consultant will not be involved in investment decision process);*
 - (b) *provide advice and assist on structuring of private investments or restructuring of invested private investments;*

- (c) *provide advice on valuation of investments;*
- (d) *provide advice and assist on deployment and repatriation of RMB of China onshore investments;*
- (e) *act as an intermediary between the investee companies and the Fund for ongoing deal monitoring and fee/principal collection; and*
- (f) *provide such other services as may be agreed between the Fund and the Consultant from time to time,*

such activities together being hereinafter referred to as the "Services". For the avoidance of doubt, the Consultant shall in no circumstances be required to perform any marketing activities for the Fund.";

- (c) *Clause 5.1 (Non-exclusivity, permissible dealings, cross interests and conflicts of interest): "Neither the Consultant's appointment nor the provision of the Consultant's Services under this Agreement is exclusive.";*
- (d) *Clause 5.2 (Non-exclusivity, permissible dealings, cross interests and conflicts of interest): "The Fund acknowledges that neither the Consultant nor any Related Person of the Consultant ... (b) is liable to account for any profit or benefit derived by any of them as a result of so acting.";*
- (e) *Clause 5.5 (Non-exclusivity, permissible dealings, cross interests and conflicts of interest): "The Consultant or Related Person, as the case may be, may (but is not obliged to) manage an actual or potential conflict of interest with the Fund by taking reasonable steps in any one or more of the following ways:*
 - (a) *by disclosing its interest to the Fund;*
 - (b) *by relying on a policy of independence;*
 - (c) *by establishing Chinese walls; and*
 - (d) *by declining to act for the Fund in that instance.";*
- (f) *Clause 6.1 (Consultant's Fees and Expenses): "In consideration for the Services performed by the Consultant, the Fund shall pay to the Consultant a monthly*

retainer equal to 0.02% of the Fund's NAV payable monthly in arrears from the date of this Agreement (the "**Retainer**"). Pursuant to the Supplement, with effect from 1 April 2013, the Retainer was increased to 0.05% of the Plaintiff's NAV;

- (g) Clause 6.2 (*Consultant's Fees and Expenses*): "... the Fund shall be liable for all expenses incurred in connection with the provision of the Services..."; and
- (h) Clause 13.6 (*Governing law and jurisdiction*): "This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of Hong Kong."

9. On 1 September 2015, the Plaintiff served notice of the termination of the Consultancy Agreement on the Defendant, pursuant to Clause 11.3 of the Consultancy Agreement, and termination took effect from 30 November 2015.

Amounts paid under the Consultancy Agreement

10. The Plaintiff understands that fees and expenses in the total amount of at least US\$1,244,604 were paid by the Plaintiff to the Defendant, purportedly for investment consulting services provided pursuant to the Consultancy Agreement, as follows:

Date	Amount
5 March 2013	US\$100,752
7 November 2013	US\$286,084
5 March 2014	US\$157,768
10 February 2015 ¹	US\$700,000
Total	US\$1,244,604

¹ This US\$700,000 payment relates to fees paid by the Plaintiff to the Defendant in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement for work undertaken in 2014.

11. The Plaintiff understands that further amounts may have been paid by the Plaintiff to the Defendant. In particular, the Plaintiff understands that the Defendant accounted for US\$610,817 in fees and expenses payable by the Plaintiff to the Defendant in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement in 2015 (and which are not reflected in the table above); however, the Plaintiff has been unable to establish whether the payment was paid by the Plaintiff to the Defendant.

Services provided under the Consultancy Agreement

12. Based on a review of the Defendant's management accounts for the period January 2015 to September 2015, it appears that the Defendant did not have any employees, assets or offices. During that period, the Defendant: (a) incurred expenses relating to bank charges, accounting fees, legal expenses and valuation expenses; and (b) did not incur any expenses for payroll, wages, supplies, depreciation and/or rent.
13. Furthermore, the Plaintiff is not aware of any email or other written correspondence passing between the Plaintiff and the Defendant or their respective directors, officers and/or employees.
14. Accordingly, notwithstanding the payment of at least US\$1,244,604 in fees and/or expenses by the Plaintiff to the Defendant, in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement, the Defendant did not in fact provide investment consulting services to the Plaintiff pursuant to the Consultancy Agreement or at all.

AND THE PLAINTIFF claims:

- (a) restitution for unjust enrichment in respect of payments made by the Plaintiff to the Defendant pursuant to the Consultancy Agreement, and in particular the payment of US\$700,000 paid on 10 February 2015 (and any further amounts paid by the Plaintiff to the Defendant thereafter, prior to the termination of the Consultancy Agreement):
 - (i) the Defendant has been 'enriched' in the total amount of at least US\$1,244,604 (together with such further amounts paid by the Plaintiff to the Defendant in respect of investment consulting services purportedly provided pursuant to the Consultancy Agreement), in particular, the Defendant received funds in the amount of US\$700,000 on 10 February 2015;
 - (ii) the Defendant has been 'enriched' at the Plaintiff's expense, the Plaintiff having made such payments to the Defendant; and
 - (iii) the retention of such payments by the Defendant, would be unjust. In particular, the Defendant failed to provide any investment consultancy services to the Plaintiff as required pursuant to the Consulting Agreement and in consideration for which such payments were made;
- (b) account, loss and/or damages for knowing receipt in respect of payments made by the Plaintiff to the Defendant pursuant to the Consultancy Agreement, and in particular the payment of US\$700,000 paid on 10 February 2015 (and any further amounts paid by the Plaintiff to the Defendant thereafter, prior to the termination of the Consultancy Agreement):
 - (i) the Plaintiff made such payments to the Defendant in breach of duty and/or breach of fiduciary duty owed to the Plaintiff by the directors and former director of the Plaintiff, the Manager, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable);
 - (ii) the Defendant received such payments in respect of investment consultancy services purportedly provided by the Defendant pursuant to the Consultancy Agreement;

- (iii) the Defendant was or ought reasonably to be aware that such payments were made in breach of duty and/or breach of fiduciary duty by the directors and former director of the Plaintiff, the Manager, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable). In particular, in circumstances where such payments were made purportedly in consideration for investment consulting services provided by the Defendant to the Plaintiff pursuant to the Consultancy Agreement and in circumstances where the Defendant was unable to perform (and did not provide) such investment consulting services to the Plaintiff;
 - (iv) the Defendant is not entitled to retain such payments. In particular, the Defendant did not provide any investment consulting services to the Plaintiff in consideration for such payments; and
 - (v) the Consulting Agreement ought to be set aside on the basis of fraud;
- (c) account and/or damages for dishonest assistance by the Defendant. In particular:
- (i) there has been a breach of duty and/or breach of fiduciary duty by each of the directors and former directors of the Plaintiff, the Manager, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable). In particular:
 - (1) in respect of the directors and/or former directors of the Plaintiff, amongst other things:
 - (A) the directors and former directors failed to act *bona fides* in the best interests of the Plaintiff, in procuring the Plaintiff: (x) to enter into the Consulting Agreement; and/or (y) to maintain the engagement of the Defendant pursuant to the Consulting Agreement; and (z) to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015 (as applicable);
 - (B) the directors and former directors failed to exercise due care, skill and diligence in supervising the delegation of management and investment management obligations to

the Manager and/or the Former Manager and, in turn, the Investment Manager and/or the Former Investment Manager. In particular, the directors and former directors: (x) failed to ensure that the Manager and/or the Former Manager and the Investment Manager and/or the Former Investment Manager acted in the best interests of the Plaintiff, (y) failed to ensure that the Manager and/or the Former Manager and the Investment Manager and/or the Former Investment Manager exercised due care, skill and diligence in the conduct of its management and/or investment management (as applicable) in procuring the Plaintiff's entry into the Consulting Agreement and/or in causing the Plaintiff to maintain the engagement of the Defendant pursuant to the Consulting Agreement, and in causing the Plaintiff to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015; and (z) in failing to ensure the proper delegation of the Manager and/or the Former Manager and the Investment Manager and/or the Former Investment Manager's management and investment management obligations (as applicable) to third parties, and in particular, to the Defendant;

- (C) certain directors and former directors failed to avoid conflicts between their personal interests and their duty to the Plaintiff. In particular as a result of their failure to avoid and failure to bring their involvement, ownership and/or interest in the Defendant, the Manager and/or the Investment Manager (as applicable) to the attention of the Plaintiff;
- (D) certain directors and former directors, in breach of duty to the Plaintiff, made secret profits for which they should have accounted to the Plaintiff, such secret profits resulting from, amongst other things, the duplication of fees payable to the Defendant in respect of investment consultancy services purportedly provided under the Consulting Agreement, and

- (3) in respect of the Investment Manager and the Former Investment Manager, amongst other things:
- (A) the Investment Manager and the Former Investment Manager failed to act *bona fides* in the best interests of the Plaintiff, in causing the Plaintiff: (x) to enter into the Consulting Agreement; and/or (y) to maintain the engagement of the Defendant pursuant to the Consulting Agreement, and (z) to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015 (as applicable);
 - (B) the Investment Manager and the Former Investment Manager failed to exercise due care, skill and diligence in supervising the delegation of investment management obligations to the Defendant;
- (ii) the Defendant dishonestly induced, assisted and/or procured the breaches of duty and/or breaches of fiduciary duty by each of the directors and former directors of the Plaintiff, the Manager, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable). In particular, in circumstances where the Defendant was unable to perform (and did not provide) investment consulting services to the Plaintiff, it was or ought reasonably to aware that entry into the Consulting Agreement and any payments made thereunder, purportedly in consideration for investment consulting services provided by the Defendant to the Plaintiff pursuant to the Consultancy Agreement, were made in breach of duty and/or breach of fiduciary duty;
- (d) loss and damages for conspiracy to injure and/or unlawful means conspiracy by the Defendant. In particular:
- (i) the Defendant, together with the directors and former directors of the Plaintiff, the Manager, the Former Manager, the Investment Manager and/or the Former Investment Manager (as applicable) conspired to cause damage to the Plaintiff, by causing the Plaintiff: (z) to enter into the Consultancy Agreement; and/or (y) to maintain the Consultancy

Agreement, and (z) to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015;

(ii) or in the alternative, the Defendant, together with the directors and former directors of the Plaintiff, the Manager, the Former Manager, the Investment Manager and/or the Former Investment Manager (as applicable) conspired to cause damage to the Plaintiff, by causing the Plaintiff to enter into and/or causing the Plaintiff to maintain the Consultancy Agreement and in procuring the Plaintiff to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015 and did so:

(1) by unlawful means – each of the directors and former directors of the Plaintiff, the Manager, the Former Manager, the Investment Manager and the Former Investment Manager (as applicable) have acted in breach of duty and/or breach of fiduciary duty to the Plaintiff: (x) in procuring the Plaintiff's entry into the Consulting Agreement; and/or (y) in causing the Plaintiff to maintain the engagement of the Defendant pursuant to the Consulting Agreement, and (z) in causing the Plaintiff to pay fees thereunder to the Defendant and in particular, the payment of US\$700,000 on 10 February 2015 (as applicable); and

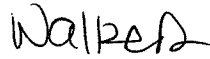
(2) the Defendant was or ought reasonably to be aware of such breaches of duty and/or fiduciary duty. In particular, in circumstances where payments were made by the Plaintiff to the Defendant purportedly in consideration for investment consulting services provided by the Defendant to the Plaintiff pursuant to the Consultancy Agreement and in circumstances where the Defendant was unable to perform (and did not provide) such investment consulting services to the Plaintiff;

(e) interest pursuant to Section 34 of the Judicature Law (2007 Revision) on such damages as may be awarded to it at such rate and for such period as this Honourable Court thinks fit;

(f) such further or other relief as this Honourable Court thinks fit; and

(g) costs.

DATED this 9th day of February 2021



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: ASIA PRIVATE CREDIT FUND LIMITED (IN OFFICIAL LIQUIDATION) PLAINTIFF

AND: INFINITUS MANAGEMENT COMPANY LIMITED 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
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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.