



GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO:                      OF 2022 (     )

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

**AND:**                              KIANG TIEN SIK DAVID

**WRIT OF SUMMONS**

TO: Kiang Tien Sik David, c/o Flat A2, 9F, Evergreen Villa, 43 Stubbs Road, 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 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 6<sup>th</sup> day of April 2022

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 Act (as amended). The Plaintiff was assigned company number 236963 and registered with the Cayman Islands Registrar of Companies on or about 9 February 2010.
2. The Plaintiff carried on business as a mutual fund and is registered as such with the Cayman Islands Monetary Authority with licence number 562026 under the Mutual Funds Act (as revised).
3. On 17 June 2014, the Defendant was appointed as director of the Plaintiff and on 30 April 2019, the Defendant resigned as director of the Plaintiff. At all material times to which this Writ relates, it is understood that the Defendant was a director of the Plaintiff, BRJ and Chintis (as defined below).

### The Private Placement Memorandum

4. The Private Placement Memorandum dated February 2015 ("**PPM**") provides that:
  - (a) the "Investment Objective" of the Plaintiff is "*to achieve superior consistent risk adjusted returns with maximum downside protection through maximizing total investment yield and capital appreciation of short- to medium-term special situation investments in growth companies in the Asia region. The majority of investments are made through credit and/or asset backed structures and/or equity markets. This allows for quarterly distributions to investors from both cash generating/yielding investments as well as realized proceeds from exited/retired investments. The principal investment objective of the Fund in respect of the Class D Portfolio is to generate absolute return annually by investing in Greater China equities using event driven ideas and long-short strategy*"; and
  - (b) the "Investment Restrictions" are "*in respect of the Class A, Class B and Class C Shares, the [Plaintiff] will generally target investment horizons of around 18 to 24 months per investment opportunity. However, the [Plaintiff] may, from time to time,*

*have a longer investment horizon per specific investment should such investment, in the opinion of the Manager, offer good risk adjusted returns to investors. No more than 10% of the [Plaintiff's] total Committed Capital or US\$20 million whichever is less, can be invested in any one transaction."*

### **BRJ Redemption**

5. In or around July 2013, the Plaintiff invested US\$2.8 million in BRJ China Credit Fund Limited ("**BRJ**") (the "**BRJ Investment**").
6. In or around April 2016, BRJ compulsorily redeemed all of the participating BRJ shares in issue, including those participating shares held by the Plaintiff which comprised the BRJ Investment.
7. BRJ gave the Plaintiff the option to have all of its participating shares in BRJ redeemed (i) in cash; or (ii) in kind and in cash.
8. On 7 April 2016, the Board of the Plaintiff passed a resolution electing to have all of the Plaintiff's participating shares in BRJ redeemed in kind and in cash (the "**BRJ Redemption Election**").
9. As a result of the BRJ Redemption Election, the Plaintiff received the following from BRJ:
  - (a) 10,000 shares in Chintis International Company Limited ("**Chintis**") (the "**Chintis Shares**");
  - (b) the transfer of a shareholder loan receivable from Chintis in the amount of US\$1.4 million (the "**Chintis Loan**"); and
  - (c) US\$288,000 in cash.
10. At the time of the BRJ Redemption Election, the Directors of the Plaintiff (including the Defendant) knew, or ought to have known, that the underlying assets of Chintis were impaired such that the Chintis Shares were effectively worthless and there was no, or close to no, prospect of the Chintis Loan being repaid to the Plaintiff.

11. Conversely, it is understood that those participating shareholders who elected to have their shares in BRJ redeemed in cash would have recovered a larger proportion of their initial investment into BRJ.
12. There was therefore no commercial rationale or justification for the BRJ Redemption Election, and the Plaintiff has suffered loss as a result of the BRJ Redemption Election.

**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 make the BRJ Redemption Election;
  - (ii) the Defendant failed to exercise due care, skill and diligence in causing the Plaintiff to make the BRJ Redemption Election;
  - (iii) the Defendant failed to avoid a conflict of interest in causing the Plaintiff make the BRJ Redemption Election;
- (b) interest pursuant to Section 34 of the Judicature Act (2021 Revision) on such damages as may be awarded to it at such rate and for such period as this Honourable Court thinks fit;
- (c) such further or other relief as this Honourable Court thinks fit; and
- (d) costs.

DATED this 6<sup>th</sup> day of April 2022

*Walkers (Cayman) LLP*

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**WALKERS (CAYMAN) LLP**  
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)

AND: DON EBANKS

**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.

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State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes

no

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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

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

[Attorney] for

[Defendant in person]

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.

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| Walkers<br>Attorneys at Law<br>KY1-9001<br>190 Elgin Avenue<br>George Town, Grand Cayman<br><br>FAO: Chris Keefe |
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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**

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.

After completion it must be delivered or sent by post to the Courts Office, PO Box 495GT, George Town, Grand Cayman.

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).

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.

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.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

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

Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Court's office.

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.

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*)".

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.

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.

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.

Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.

A Defendant acting in person may obtain help in completing the form at the Court's office.