

The Role of the Professional Trustee in Corporate Transactions

Legal duties same as any other Trustee!

Protecting interests of members

- Accrued rights
- Future accrual

What a professional trustee can add

- Independence in dealing with actual or potential conflicts of interest
- Experience
- Commerciality
- Influence behaviour and act as a Principal
- Leadership of the process

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What do trustees rely on

- Powers under Rules
- Regulator clearance process
- Statutory Funding regime
- Strategic and tactical professional advice
- Commercial opportunity / negotiations

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Transactional activity

- Benefit changes and liability reduction exercises
- Capital restructuring / special dividends
- Sale of a non participating group company
- Sale of participating company
- Deficit "solutions"

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Benefit changes & liability reduction exercises

- Company A seeking to reduce liabilities before a restructuring and sale of part of the business
- Issues for trustees
 - Transfer basis
 - Conflicts of interest
 - Debt obligations of existing employers
 - Covenant of remaining employer
 - Future investment strategy

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Benefit changes & liability reduction exercises

- Outcome
 - Transfer enhancements offered as cash by company. Trustees satisfied that disclosure made to members
 - Conflicted trustees stood back from decision making and acted in their corporate capacities
 - No debts triggered
 - Group restructured
 - Remaining employer granted security to take effective funding level up to buy out
 - Rest of group sold to third party

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Payment of Special Dividend

- Company B seeking to pay a special dividend
- Issues for trustees
 - Company appointed trustees conflicted
 - Only other trustee newly appointed MNT
 - MNT also a shareholder
 - Was clearance needed?

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Payment of Special Dividend

- Outcome
 - Conflicted trustees stood back
 - Professional covenant review showed no significant deterioration post event
 - tPR consulted
 - Agreed not type A event

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Sale of non participating group company

- Company C selling a group company which contributed c60% of group turnover but did not participate in the DB scheme
- Issues for trustees
 - Conflicts of interest
 - Impact on remaining / participating group companies
 - How to maximise influence in the transaction

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Sale of non participating group company

- Outcome
 - Conflicted trustees stood back and acted for Company
 - Business review confirmed that disposal improved group covenant. However, it also highlighted potential weakness of participating companies
 - Group level funding guarantees sought
 - Negotiations on technical provisions focussed on weakness of participating companies without group guarantee

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Sale of participating company

- Company D selling a participating company out of the group. Participating company cannot pay its S75 debt
- Issues for trustees
 - Enforcement of S75 debt
 - Alternative arrangements
 - Identify value of disposal at group level

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Sale of participating company

- Outcome
 - Trustees and tPR agreed Approved Withdrawal Arrangements
 - Principal Employer debt guarantee
 - Additional deficit contribution payments over 6 years
 - Parent company guarantee on debt payments

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Pension Deficit Solution

- Company E would no longer have had support of its bankers unless the pension deficit is removed with the scheme entering the PPF
- Issues for trustees
 - Conflicts of interest
 - Alternative outcomes from S75 debt claim
 - Improving the asset recovery
 - Preserving jobs
 - tPR clearance
 - Communication to members

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Pension Deficit Solution

- Outcome
 - Professional trustee lead negotiation process on behalf of all trustees
 - Insolvency outcome – no dividend for scheme
 - Trustees take a contingent stake in future value generation by company
 - Jobs preserved and tPR support the outcome
 - Clear and effective communication of impact on benefits to allow members to plan ahead and minimise effect on value of business

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The role of professional trustee

- The time to commit!
- Leadership of the process as a Principal
- Experience allows the professional trustee to leverage value
- Effective negotiation with Company, advisers and Regulator
- Communication of outcome to members

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