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Law Debenture is called upon to play a critical role in wide variety of corporate and financial transactions. No other institution can match its combination of expertise, experience, independence, longevity, flexibility and innovation. See below for representative examples of Law Debenture's involvement in a range of corporate and commercial transactions and situations.

Separate inserts are available with details of Law Debenture's role in connection with:

- Debt financings (*Role of the Trustee and Trustee or Fiscal Agent*)
- Structured finance
- Project financings

Mergers

Issue

A company wished to merge with another. For political and tax reasons, a straightforward merger was not possible.

Solution

The two companies remained in existence with separate listings and a parallel voting structure. A golden share in each was controlled by Law Debenture, to ensure that the two sets of existing shareholders received identical benefits from and had the same rights in the amalgamated enterprise. There was no actual transfer of shares or assets.

Disposals

Issue

A company issued a convertible bond to finance the acquisition of another business. The terms of the issue included the standard covenant prohibiting "substantial disposals without the consent of the Trustee". The original business became loss-making and the company wished to dispose of it. Would the trustee consent?

Solution

Under English law, a trustee will exercise the discretion granted to it by the trust deed whereas with a fiscal agent a meeting of bondholders would be necessary. In the event, Law Debenture was able to consent to the disposal.

Privatisations

Issue

As a result of the privatisation of a country's coal mining industry, the duty to make good damage caused through subsidence was imposed by statute on the private mine operators. The issue was how to protect local communities, exposed to the risk of extensive loss to property and housing through subsidence, from the credit risk of these new mine operators.

Solution

The mine operators were required to provide Law Debenture as trustee with third-party guarantees or letters of credit which Law Debenture could use to fund the necessary work if the mine operator failed to do so.

Private Finance

Issue

The lenders to a hospital that was being built under the Private Finance Initiative had to be satisfied that (1) the hospital would still be able to operate if one of the essential servicing companies was unable to fulfil its contractual obligations, and (2) no one category of lender could jeopardise the project by accelerating its debt ahead of the other lenders.

Solution

Law Debenture as trustee was assigned various agreements that would allow the lenders time to arrange for a substitute service provider in the event of a failure of a crucial part of the hospital operations, and thus prevent the financing arrangements from being affected. This solution was also a vital part of ensuring that the agreed order of payments could not be altered by actions of the financing parties.

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Regulatory requirements

1. Broadcasting

Issue

A television broadcaster was bidding for a licence. However, its controlling shareholders were ineligible to hold a licence by virtue of their foreign domicile.

Solution

The shares in the broadcaster were placed with Law Debenture on a full discretionary basis, including voting control and appointment of directors. Law Debenture as the shareholder was deemed to control the company for the purposes of the applicable broadcasting legislation.

Issue

A UK broadcaster wanted to acquire another UK broadcaster. Both companies held shares in a third UK broadcaster. If the acquisition went ahead the acquiring company would own more than 15% of the third company and so be in breach of the Broadcasting Act.

Solution

With the approval of the regulatory authorities the shares in the third company were transferred to an SPV whose shares were held by Law Debenture under a trust arrangement. Law Debenture also supplied a majority of the directors so the SPV's independence was maintained. The acquisition went ahead.

2. Competition/Anti-Trust

Issue

An acquiring company had to satisfy the EU competition authorities that it would not vote its shares in the target in an anti-competitive manner.

Solution

The shares in the target were placed with Law Debenture under a strictly defined voting trust.

3. Bank ownership

Issue

The owners of a bank were not considered suitable by the Bank of England to control the holder of a banking licence.

Solution

With the agreement of the Bank of England, the bank's shares were split into two categories. Voting control was vested in the 'A' shares which were placed in trust with Law Debenture on terms that the voting rights would be exercised in the interests of depositors, while the economic benefits belonged to the 'B' shareholders (the original owners).

Bond issue redemption

Issue

As part of a major restructuring, a multinational wished to redeem an existing bond issue. However, it did not know how investors would react or the price at which they would agree to be bought out. While the company did not want to overpay, it recognised the importance of maintaining good relations with the market.

Solution

After consultation with Law Debenture as trustee of the bond issue, the company was able to arrive at a structure and propose a price for redemption that satisfied the market. This provided it with the certainty of knowing that, when the proposal was publicly announced, it would be well received.

Protection of shareholder rights

Issue

A Swiss company wished to incorporate in England and move its primary listing to London. Under Swiss law certain entrenched shareholder rights cannot be changed without the approval of all shareholders. Under English law a company's articles can be amended by special resolution with only a 75% majority. So how could the company incorporate in England whilst protecting entrenched shareholder rights?

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Solution

A special voting share was issued to Law Debenture. The entrenched rights can only be amended if Law Debenture as holder of the special voting share does not vote against the resolution. Law Debenture will not vote against such a resolution if either none of the shareholders at the time of the change of incorporation object or it receives specified Swiss and English legal opinions.

Treaty organisations

Issue

An international treaty organisation was to be restructured as a public company. But certain members were unable to hold shares directly in a public company.

Solution

Those shares that could not be taken directly by those members were placed in a trust held by Law Debenture, with voting and economic benefits flowing to those members.

Credit enhancement

Issue

A bank wanted to establish a stand-alone derivatives unit with a higher credit rating than either the bank or the country in which it was established.

Solution

The unique capital and collateral structure of the derivatives unit, including a \$100 million surety bond, was charged to Law Debenture as security trustee. The unit's capital was dynamically adjusted to reflect counterparty credit quality and exposure concentration, and was invested by Law Debenture in high quality short-term instruments. The result was a triple-A credit rating.

Environmental impairment

Issue

Legislation imposed on licence holders responsibility for remedial work to oil wells. At issue was the need to ensure that the oil companies concerned would meet this obligation following expiry of their licences.

Solution

The oil companies entered into a deed of trust with Law Debenture as trustee with power to hold and release funds for the remedial work.

Insolvency – Protection of creditors

1. Ring-fencing assets

Issue

If an insolvent insurance company was to make the most of its assets, the shares had to be ring-fenced to allow a scheme of arrangement to be put in place for the benefit of creditors.

Solution

The shares were transferred into a trust held by Law Debenture, under the terms of which the trustee exercised its rights and powers as a shareholder at the direction of the scheme administrators.

2. Realisation of assets

Issue

A bank was in administration. At issue was how to ensure the assets were realised more efficiently for the benefit of secured depositors, if the bank were ever wound up.

Solution

Cash accounts with a clearing bank were charged to Law Debenture as the security trustee, with the proviso that funds could only be released to the secured depositors upon a request from the administrators and with the agreement of the security trustee.

Systems failure

Issue

In the event of a computer systems failure, the valuable back-up software had to be readily available, yet securely held.

Solution

Under an escrow agreement, Law Debenture was required to hold the key to the safety deposit box in which the software was kept.

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Escrow

Issue

Part of the consideration for a share sale was to be deferred pending satisfaction of certain conditions. The vendor wished to ensure that the funds would be ring-fenced and under the control of an independent third party.

Solution

An amount to cover the deferred consideration was held by Law Debenture under an escrow trust for release against a specified form of confirmation.

Issue

Shares were to be held for a period in connection with possible claims under representations and warranties given in relation to the sale of a business. The purchaser wished to ensure that the shares would remain available during the relevant period.

Solution

The shares were held by Law Debenture under an escrow trust arrangement for sale or release against specified forms of certification.

Managing conflicts

Issue

A European not-for-profit association held shares in various companies supplying goods and services to the industry which it represented. To avoid any suggestion of conflict it wished to separate out the management of those companies from its other activities.

Solution

The voting rights were transferred to Law Debenture as trustee of a voting trust under which it would vote in accordance with the directions of a committee made up of the directors of the companies concerned.