



Corporate Trust

COVID-19: In uncharted economic territory....

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Introduction

The impact of COVID-19 on the UK economy has led to a variety of challenges for businesses in the short and medium term. International dynamics add to the insecurity they must contend with.

At LawDeb we are always looking to prepare for the future and, at this time of uncertainty, we thought that it would be helpful to share with you the wide range of support and solutions that LawDeb can provide.

Work with LawDeb to **get things done**

LawDeb has streamlined on boarding and KYC processes meaning that we can consider and commit to new appointments very quickly. When timescales really matter, the dedicated and experienced deal team will ensure efficiency, responsiveness and speed of execution.

Some of the ways the highly proficient LawDeb team can work with you to make a difference and to provide stability in the midst of uncertainty, are outlined in this brochure.

1. International Capital Markets

LawDeb has been established for over 130 years during which time it has acted as trustee on domestic and international bond issuances by Sovereigns, supra-nationals, major corporates and SMEs, all operating in diverse industries.

LawDeb's team has a wealth of experience of dealing with a wide variety of post-issuance matters including waivers, restructurings and defaults as well as enforcement and realisation of security.

Whether due to a potential conflict of interest for a bank-owned trustee with other positions in the transaction or a preference by an incumbent trustee to retire for internal reasons, LawDeb is often approached to act as successor or delegate trustee and bring our knowhow and experience to bear.

2. Insolvency, Restructuring and Workouts

Our experience of acting on behalf of investors and creditors as a trustee in times of adversity extends beyond our role in the capital markets.

Whilst, of course, our fiduciary duties and attention to detail remain the same, the elastic nature of the trust concept means that the extent of the support and solutions that LawDeb can provide is much wider than the traditional role of a bond or security trustee.

Examples of trust solutions in the insolvency, restructuring and workout space

Case Study 1

Where the administrator of an insolvent UK company sold a subsidiary's very successful overseas business to a local competitor that was unable to fund the purchase entirely by cash, we enabled secured creditors to be able to share in the future value of the business being sold to the new owner when the enlarged business was sold in the future or was the subject of an IPO.

The proportionate value of the creditors' share in the enlarged business was calculated on an accreting basis so as to encourage a near term exit by the new owner.

This process was achieved through LawDeb holding the contractual obligations of the new owner on trust for the creditors and being the sole interface between the creditors and the new owner.

In the meantime we enabled the creditors to trade their individual entitlements if they so chose.

- ✓ Use of such an approach by an insolvency practitioner could attract a wider pool of potential investors who would not have to rely solely on cash resources or bank funding to pay for an acquisition and thus could generate a better value/price outcome for creditors.
- ✓ Similar arrangements might lend themselves well to commercial real estate disposals where value could be generated from a fresh management strategy pending an eventual sale at an enhanced value.

Case Study 2

Pursuant to the terms of an English scheme of arrangement undertaken in respect of a non UK corporate ("C") to bind in dissenting creditors to a restructuring, if a trigger event occurred, then 100% of the shares of C were to be sold to the order of the lenders.

However, the bank lenders did not want to hold the shares directly. The sale was therefore structured as a conditional sale under a sale and purchase agreement. The proposal was for the sale and purchase agreement to be entered into by a third party, LawDeb, on behalf of the lenders as the purchaser of the shares. The sale and purchase agreement was entered into at the time of the restructuring.

In order to implement a pre-agreed exit mechanism by way of a conditional sale agreement with a diverse group of lenders (not all of whom supported the proposal), LawDeb would hold the shares in C on trust for the lenders pending the occurrence of specified trigger events, whereupon it would then sell the shares and distribute the proceeds to the lenders at a later date.

This was achieved using two LawDeb orphan companies and a bare trust mechanism. In addition, one of the Law Deb orphan companies held a special B Share issued by C from day 1 of the restructuring. The reason for this was that the B shareholder could then block the existing shareholders from passing resolutions without the B shareholder's consent and so protect the lenders' interests.

If a trigger event occurred, then one of the orphan companies would purchase the remaining shares in C for a nominal fixed price and so become the legal owner of all of the shares. Such company would then indirectly hold the shares on trust for the lenders as bare trustee, pending sale of the shares to a third party as soon as possible thereafter.

- ✓ Such share trusts are not widely available elsewhere in the market because the provision of such services does not normally fit within the approved product line of other trustees.

3. Successor Security Agent

Where the incumbent security agent has other potentially conflicting positions in a financing structure or wishes to resign, there is a strong commercial driver to have, as a replacement, a truly independent and non-conflicted security agent with a strong reputation in the financial markets.

Whether it be collateral for secured note issuances, loans to corporate borrowers or syndicated loans for major project and infrastructure financings, LawDeb has considerable experience of holding security as security agent under local law all over the world.

In addition to cash, shares, real estate, and aircraft the diversity of our experience is very considerable and ranges from hydroelectric plants to unenriched uranium and from diamonds to wind farms.

- ✓ Accordingly LawDeb is often approached to act as successor security agent.
- ✓ Law Deb also provides the related services of facility agent and intercreditor agent and can similarly do so in a successor capacity.



4. Mergers, Acquisitions and Strategic Investments

Many expect an increase in M&A activity in the coming months as a result of buy-outs of distressed assets, restructurings and other emergency transactions.

Depending on the circumstances or sector involved, potential regulatory issues might arise in connection with market share or foreign investment screening. Following COVID-19, there may be an increased focus to protect vulnerable strategic assets and critical national infrastructure from being taken over by foreign investors.

LawDeb has considerable experience of providing bespoke share trust solutions with either regulatory approval or at the behest of regulatory agencies. Cases where share trusts have been used to comply with regulatory requirements that might otherwise frustrate the sale of a business by an insolvency practitioner include:

A television company wished to acquire another television company but both companies held shares in a third television company, such that, if the acquisition went ahead, the acquiror would end up holding more than 15% of the third television company which would be in breach of the Broadcasting Act. The solution, approved by the Regulator, was for the shares held in the third television company to be transferred to an SPV held by LawDeb under a trust arrangement. LawDeb also supplied the majority of the directors of the SPV in order to maintain the independence of the SPV and the acquisition went ahead.

LawDeb was approached by the regulator when a retail operation that had a small banking subsidiary was acquired and the new owners were not eligible to hold a banking licence. In order that the banking subsidiary could continue to operate, the shares in the bank were split into two categories. The A shares with voting control and the right to appoint the directors were held by LawDeb. The B shares entitled to receive all of the economic benefits – including dividends – were held by the new owners of the business. In the case of two other small UK banks, LawDeb was approached by the regulator to instigate similar arrangements.

Whilst these case studies relate specifically to the use of share trusts in the context of regulatory matters, **bespoke share trusts are a LawDeb specialisation.**

- ✓ We have considerable experience of providing other share trust solutions that could be relevant to: (i) disposals and acquisitions of distressed assets where potential difficulties arise, (ii) the protection of call options in joint ventures where one party becomes insolvent or (iii) the avoidance of breaches of non-compete agreements that would otherwise arise from an acquisition.

5. Escrow Services

In times of heightened uncertainty, concerns as to the continuing credit-worthiness of counterparties and reduced levels of trust between people doing business together become much more commonplace.

In view of LawDeb's domestic and international reputation as a unique provider of financial and professional services, we are frequently approached to act as a trusted non-conflicted third party to hold cash, documents, shares or other assets in escrow pending a particular outcome, milestone, delivery or satisfaction of conditions.

In our experience the use of an escrow arrangement can arise in a large variety of circumstances, including release of funds following evidence of shipment of PPE masks, the satisfaction of warranties on the sale of a business, release of funds once an obligation is fulfilled, an alternative to payment into court and covering rental defaults following the sale of commercial real estate.

Whatever the underlying commercial purpose, LawDeb has a suite of market standard documents ready to use depending on the nature of the underlying escrow property. We also have a dedicated treasury team to deal with receipts and payments of cash and, where appropriate, the placing of funds on an interest-bearing basis.

Following the requirement by the SRA that law firms no longer use client accounts to hold funds in escrow, demand for our services has further increased.

- ✓ In our experience escrow arrangements are often required at short notice and we excel at this.
- ✓ We have documentation available for use immediately,
- ✓ We can open escrow accounts in a matter of hours with HSBC Bank and our nimble KYC on-boarding process is more efficient and quicker than most of our competitors.

How Can Our Expert Team Help?

Acting as a truly independent and non-conflicted trustee and agent with an enormous range of experience developed over 130 years, the LawDeb team can offer a wide range of support and solutions during the challenging times that lie ahead.

Our LawDeb management team is meeting regularly and our business continuity plan is in operation and facilitating our people to work in the safest way possible to service the needs of our clients with integrity and professionalism during these uncertain times.

We provide relevant mobile contact details below, please don't hesitate to contact any one of us:

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