**PPF Guidelines for intercreditor arrangements in RAA transactions**

**IMPORTANT**

**This document is for lawyers who are familiar with RAA transactions involving the Board of the Pension Protection Fund (**the "**PPF**"**).**

**EXPLANATORY NOTES**

**1** In any RAA transaction where Loan Notes and accompanying security are granted to the PPF, it may be necessary to provide for intercreditor arrangements, depending on the facts.

**2** Where intercreditor arrangements are required, the terms will be heavily fact specific. Where more than one intercreditor agreement is needed (possibly for different group companies) the terms may differ according to the facts. However, the PPF will require any such intercreditor terms to adhere to the Guidelines set out below, and thus this document is intended to assist parties in considering appropriate terms.

**3** Because any intercreditor terms will always be fact specific, there may be matters other than those specified below which the PPF will require to be addressed to its satisfaction in order to reach agreement. More generally, nothing in this document will impose any fetter on the PPF's ability to adapt its position according to the circumstances of any given transaction.

**4** This document is a not a comprehensive guide to the legal and practical issues that may arise on a deal-specific basis.

**5** The commentary below assumes that the reader is familiar with intercreditor agreements, and, as such, sets out guidelines by reference to standard provisions of intercreditor agreements.

**6** Parties are also referred to the PPF Standard Form Loan Note Instrument and Standard Form Guarantee and Debenture.

**7** Execution by the PPF: The PPF is a statutory corporation rather than a Companies Act 2006 company. The PPF executes deeds by affixing its seal in the presence of one authorised signatory.

## INTERCREDITOR GUIDELINES

### 1 Ranking of debt and security

The intercreditor agreement ("**ICA**") should simply reflect the commercial terms.

### 2 Undertakings

2.1 Undertakings from other parties:

The PPF will expect to see undertakings from any prior ranking creditors not to increase the principal amount, interest rate or margin on, or fees or commission payable in respect of such prior ranking debt.

Similarly, the PPF will expect any prior ranking creditors not to take any additional guarantees or security unless similar guarantees or security are made available to it.

If the PPF is not the first ranking creditor, any undertakings on the part of the chargor(s) not to repay or pay distributions in respect of junior debt until prior ranking debt is repaid in full must be adapted to be consistent with the provisions of paragraph 2.2 below.

2.2 Undertakings on the part of the PPF:

The PPF will not limit its ability to receive sums falling due to it in accordance with the terms of the Loan Notes ("the Notes") on the due dates for payment (whether in respect of interest or principal). As such, where it is not the first ranking creditor, it will not provide an undertaking not to receive repayment or distributions or exercise set off in respect of the sums due to it while prior ranking debt is outstanding. Any sums properly payable in accordance with the terms of the Notes must be permitted payments under the ICA.

Any undertakings regarding restrictions on enforcement must not be contrary to the provisions regarding enforcement at paragraph 5 below.

### 3 Layering

The creation of any new layers of debt in the future which rank in priority to the PPF should be subject to the PPF's consent.

In circumstances where the PPF has provided such consent, these Guidelines will apply equally to any new ICA which is entered into upon the creation of such additional debt.

### 4 Turnover and subordination on insolvency

The PPF will not agree to any provisions which would permit a prior ranking creditor to require the PPF to turn over to it any sums which the PPF has received in accordance with the terms of the Notes. Consequently, payments made to the PPF should be excluded from any general turnover provisions.

## 5 Restrictions on enforcement

The PPF must be permitted to exercise remedies in circumstances where there is a default in respect of the Notes.

Therefore, if the PPF is not the first ranking creditor, the usual restriction on the ability of junior creditors to take enforcement action while senior debt is outstanding must include appropriate caveats, so that permitted enforcement rights on the part of the PPF are provided for.

## 6 Amendments, waivers, consents and releases

The PPF will not agree to provisions which enable any prior ranking creditors (or any other third party) to cause the terms of the Notes or of any guarantee or security in favour of the PPF to be adversely affected. For example, where the PPF is not the first ranking creditor, any release of debt or security by the senior lenders should not bind the PPF.

Any release of the PPF's security in an enforcement scenario should only occur if the Notes will be repaid in full in cash, if such enforcement is implemented by the senior creditors pursuant to a Competitive Sales Process or a court supervised process or pursuant to any other process provided a Fair Value opinion has been issued by an investment bank or accountancy firm in relation to the enforcement proceeds and in each case provided that the enforcement involves a sale to a genuine third party that is not connected to the Loan Note Issuer's Group or if the PPF otherwise consent to such release.

## 7 Power of attorney

The PPF will not agree to the appointment of any senior creditor as its attorney.

## 8 Parties and inclusion of PPF specific provisions

Both the trustees of the relevant pension scheme(s) (as the original pensions creditor) and the PPF should be party to the ICA, and the ICA should contain provisions relating to the PPF similar to those set out in clause 1.4 of the PPF Standard Form Guarantee and Debenture.