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Applying Lessons of Kodak, Tata, Halcrow and Hoover how do you restructure a pension fund so its acceptable to TPR and PPF?

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Overview of different types of restructuring

- "Bradstock" compromise
- Kodak type restructuring
- "Pre-pack"
- Regulated apportionment arrangements ("RAAs")

All against background of financial distress

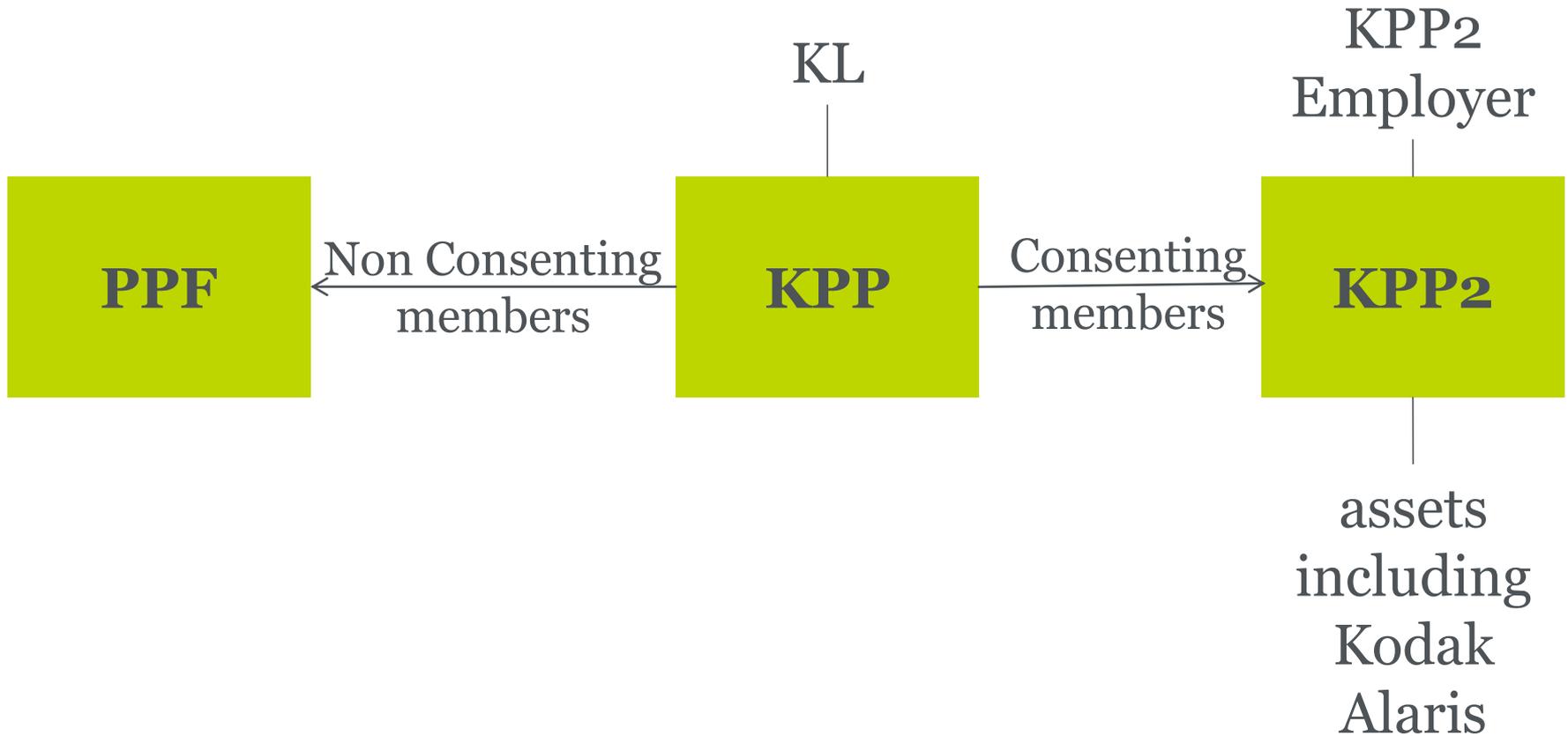
"Bradstock" compromise

- Bradstock Group Pension Scheme Trustee Limited v Bradstock Group Ltd (2002)
- Trustees can use power under Trustee Act 1925 to compromise S75 debt if in members' interests
- Trigger scheme wind-up; S75 debt due; compromise amount paid; lower benefits bought out
- Once compromised S75 debt paid, employer discharged of pension liabilities
- Since PPF established, lump sum paid over must deliver better benefits than PPF
- Were common; now out of favour

"Kodak" style restructuring

- Prospect of delivering better than PPF benefits but no lump sum immediately available
- Member benefits reduced with member consent
- PPF entry for those members who do not agree
- Replacement scheme benefits funded over time:
 - Tata and Halcrow from employer contributions
 - Kodak – income stream from Eastman Kodak's former businesses
- Restructuring without an employer unlikely to work now because of levy changes ("Schemes without a Substantive Sponsor")

"Kodak" style restructuring



"Pre-Pack"

- Sale of employer's business and assets negotiated before appointment of insolvency practitioner
- Sale takes place immediately on appointment
- About 150 pre-packs involving DB pension schemes since PPF established (e.g. Bernard Matthews; Cluttons)
- Why?
 - Business continuity
 - Protects relationships with employees, customers, suppliers
 - Less negative publicity
 - Better value realised on sale

"Pre-Pack"

- Appointment of insolvency practitioner triggers PPF assessment period
- Trustee (PPF) creditor in insolvency process
- PPF no power to prevent a pre-pack but has published guidance on its approach
 - Expects to be consulted as early as possible
 - PPF can appoint alternative IP if ineffective consultation
 - TPR moral hazard powers

Regulated Apportionment Arrangements ("RAAs")

- Introduced 6 April 2008
- Less than 30 since that date
- Original employer's liabilities apportioned to a new employer; new employer suffers insolvency event
 - Original Employer discharged from all liabilities
 - Unlike a pre-pack, no original employer insolvency required
- Legislation requires
 - Trustee to decide insolvency likely in next 12 months
 - TPR; Trustee and new employer approval
 - PPF does not object

Regulated Apportionment Arrangements

- If you want to do an RAA, slavishly follow PPF's restructuring principles:
 - These go beyond the legislation for an RAA
 - Trustees will use them as guidance even where PPF consent not needed (e.g. Bradstock Compromise)
 - TPR has similar criteria

Tip 1

PPF Restructuring Principles

- Insolvency must be inevitable
- Pension scheme does better than on insolvency
- Pension scheme treated fairly compared to other creditors
- PPF gets equity in restructured business: 10% or 33%
- Would the pension scheme be better off if TPR had used moral hazard powers?
- Any bank fees are reasonable
- Employer pays the restructuring costs

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- The Trustee's conclusion on the restructuring principles is normally key
 - NB Hoover – skilled pension's report on affordable deficit contributions
 - S71 Pensions Act 2004
 - TPR power to require trustee, employer or administrator to obtain a skilled persons report
 - Reserved Power

Tip 2

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- Make allowance for 28 day cooling off period for RAA
 - TPR required to determine standard procedure for non-reserved functions (such as power to approve an RAA)
 - TPR's guidance on standard procedure requires it to issue a warning notice to directly affected parties and allow them to challenge within 28 days
 - PPF non-objection issued after expiry of challenge period

Tip 3

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- Work closely with TPR and the PPF
 - Talk to them regularly
 - Send early drafts of clearance application

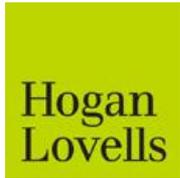
Tip 4

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- Once the economics have been agreed, almost anything can be overcome

Tip 5

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- If aiming for Kodak/Halcrow/British Steel solution, be prepared to prove ongoing viability of scheme

Tip 6



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