

## Ombudsman's Determination

Applicant	Mr E
Scheme	Cincinnati Machine Pension Plan (the <b>Plan</b> )
Respondent	The Board of the Pension Protection Fund (the <b>Board</b> )

### Complaint Summary

1. I have received a reference of a reviewable matter following a decision by the Board's Reconsideration Committee dated 22 October 2021. The reviewable matter concerns the Board's approval of the section 143 valuation of the Plan. Mr E says that the insolvent employer's wider corporate group (the **MAG Group**) should fund the Plan, so that his pension is provided in full and outside of the Pension Protection Fund (the **PPF**).
2. Mr E has also raised a complaint of maladministration concerning the Board's handling of his complaint. He says that the Board: delayed in responding to correspondence; failed to supply him with information he requested; and operated an inadequate Secure Mail System.

### Summary of the Ombudsman's Determination and reasons

3. The Board is not required to take any action because:-
  - 3.1. None of the events Mr E has cited show that MAG International or other entity within the wider MAG Group is responsible for funding the Plan.
  - 3.2. The Board's Reconsideration Committee reached its decision correctly with regard to the sponsoring employer of the Plan.
  - 3.3. I have not seen any evidence that discredits the Board's decision to approve the section 143 valuation of the Plan.
  - 3.4. I do not make any findings on Mr E's complaint of maladministration in this decision, because there is no indication that the conditions for the referral of a complaint of maladministration have been met.

## Detailed Determination

### Material facts

4. The Plan is governed by the provisions of the Fifth Definitive Deed and Rules dated 9 October 2002 (as amended) (the **Rules**).
5. Cincinnati Machine UK Limited (company number 3256777) was the Principal Employer and sole sponsoring employer of the Plan, until it was discharged of its obligations under the Plan via a Deed of Amendment dated 3 April 2005 (the **2005 Deed**). Under the 2005 Deed, Cincinnati Machine Limited (company number 05322930), a subsidiary of MAG International Industrial Automation Systems S.a.r.l. (**MAG International**), became the Principal Employer and sole sponsoring employer of the Plan.
6. Extracts from the Rules and the 2005 Deed are provided in the Appendix.
7. In late August 2006, the Plan closed to future pension accrual. In September 2006, the Trustees issued an announcement to members with a deferred pension in the Plan (**the September 2006 Announcement**) stating that:

“All pension benefits earned prior to 28 August 2006, including deferred pensions for ex employees, are protected and will become payable in the normal way. Although the current employees will no longer be able to contribute to the Cincinnati Machine Pension Plan, the Company’s<sup>1</sup> contributions will continue, in order to ensure all benefits are paid in full.

...

The change has no impact on individuals who left Cincinnati Machine Limited prior to 27 August 2006. Unless you decide to transfer your pension benefits to another pension plan, your pension benefits will become payable at retirement in exactly the same way.”
8. The MAG logo was displayed above the Plan’s name and contact address provided at the top of the announcement. Cincinnati Machine Limited’s name was highlighted at the bottom of the page.
9. On 26 September 2008, a written resolution (**the Written Resolution**) of Cincinnati Machine Limited appointed two directors of the company with immediate effect. The Written Resolution was authorised for and on behalf of MAG International.
10. On 5 May 2009, Cincinnati Machine Limited changed its name to MAG Maintenance UK Limited.
11. In or around 2012, MAG Maintenance UK Limited experienced financial difficulties and to strengthen its financial position, a framework agreement dated 19 April 2012 was reached which:-

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<sup>1</sup> Cincinnati Machine Limited.

- (i) Released MAG Maintenance UK Limited from its obligation to pay:
    - a substantial part of intercompany loans with MAG Europe and MAG IAS LLC (**MAG US**); and
    - deficit reduction contributions for 2012 to the Plan.
  - (ii) Secured a debenture for the Trustees, granting them fixed and floating charges over MAG Maintenance UK Limited's assets should an insolvency arise (**the Debenture**).
12. Extracts from the 19 April 2012 framework agreement and the 2012 Trustees' Report with the details of the debt release and the Debenture are provided in the Appendix.
  13. Two employees of MAG International were subsequently appointed as trustees of the Plan by MAG Maintenance UK Limited (as the Principal Employer).
  14. On 1 December 2016, MAG UK Maintenance Limited changed its name to MT Squared Limited.
  15. In December 2019, MT Squared Limited entered a creditor's voluntary liquidation, which caused the Plan to enter the PPF assessment period. The PPF appointed Dalriada Trustees (**Dalriada**) as the Plan Trustee in place of the Trustees at the time.
  16. In June 2020, Dalriada notified Mr E that MT Squared Limited was legally responsible for funding the Plan. This notification was given following legal advice it had obtained from ARC Pension Law. ARC Pension Law advised Dalriada that:-
    - 16.1. It was not possible, given the limited information available and the many changes in ownership of employers in the Plan, to be able to prove whether there were any statutory employers other than MT Squared Limited.
    - 16.2. There was no evidence that the majority of companies that adhered to the Plan, most of which had ceased to exist, ever employed members who had accrued benefits under the Plan.
    - 16.3. For those for which evidence of accrual existed, the evidence was that they ceased to accrue either before 5 April 1997 or at a time when there was no deficit on the appropriate basis for an employer debt. So, they were not statutory employers.
    - 16.4. Before the change of Principal Employer from Cincinnati Machine UK Limited to Cincinnati Machine Limited, the Plan had become a single employer.
    - 16.5. From the available evidence, MT Squared Limited was the only employer under the Plan. So, it was appropriate for the Trustee to consider the Plan a single employer scheme and to operate it accordingly.

17. In May 2021, the Board approved a section 143 valuation<sup>2</sup> of the Plan, which showed that the Plan had insufficient assets to pay the PPF's levels of compensation. The Board concluded that there was no reason it could identify that would prevent it from accepting and approving the section 143 valuation.
18. In July 2021, Mr E asked the Board to review its decision to approve the section 143 valuation. Mr E said:-
  - 18.1. Because of the movement of the Plan between companies it was questionable who was responsible for the Plan.
  - 18.2. MAG International had acquired Cincinnati Machine Limited, held the core business of the previous employer<sup>3</sup>, and was responsible for the Plan. This was evidenced by: (i) the appointment of three trustees to the Plan, of which two were employees of MAG International and one was an employee of MAG Maintenance UK Limited; (ii) the 2009 and 2016 name changes of the current employer; and (iii) the appointment of two directors of the current employer in 2008.
  - 18.3. MAG International had kept the core business of the previous employer but then "disappears with suddenly no responsibility" for the Plan.
  - 18.4. MT Squared Limited was a service company with insufficient resources to support the Plan.
19. Mr E asked:-
  - 19.1. What had happened to the Plan's contingency that guaranteed members' pensions?
  - 19.2. Was the Plan fully paid up when it was taken over by the current employer?
  - 19.3. How was the current employer judged fit to take over the Plan?
  - 19.4. How was MAG International able to move away from the Plan while keeping the main assets of the business?
  - 19.5. What efforts had been made to collect the Plan's deficit from MAG International?
20. Mr E's request was treated as a formal review. In its decision letter dated 12 August 2021, the Board said:-
  - 20.1. In April 2005, Cincinnati Machine Limited, not MAG International, acquired the core business of Cincinnati Machine UK Limited and became responsible for

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<sup>2</sup> A valuation obtained in accordance with the Board's obligations under section 143 of the Pensions Act 2004.

<sup>3</sup> Cincinnati Machine UK Limited.

funding the pension liabilities of the Plan. The actuarial valuation<sup>4</sup> before the acquisition, showed that the Plan was 55% funded on the buy-out basis with a buy-out deficit of £32.6 million.

- 20.2. MAG International was the parent company of the current employer and, as sole shareholder, could exercise certain powers in relation to it, including changing its name and appointing its directors. But this did not mean that MAG International was under any legal obligation to fund the Plan.
- 20.3. The current employer, in its capacity as Principal Employer had the power to appoint trustees to the Plan and appeared to have appointed employees of MAG International as trustees. Again, this did not mean that MAG International was under any legal obligation to fund the Plan.
- 20.4. For this to apply, either MAG International would need to have employed active members in the Plan, or to have entered into a legal arrangement with the trustees of the Plan guaranteeing the current employer's pensions obligations. There was no evidence that either step had occurred.
- 20.5. Based on the information available to the Board, it had seen nothing to suggest that since April 2005, part of the business and/or assets of the current employer had moved elsewhere in the MAG Group.
- 20.6. If there had been any internal reorganisation and the trustees of the Plan were concerned that this might affect the ability of the current employer to meet its liabilities to the Plan, they could have asked The Pensions Regulator (**TPR**) to consider exercising its anti-avoidance powers. But there was no evidence that the trustees had taken this step. The fact that the trustees involved TPR in negotiations with the MAG Group in 2012 demonstrated that they were aware of the importance of raising concerns with TPR and keeping TPR informed.
- 20.7. Additionally, the Insolvency Practitioner would have investigated the activities of the directors prior to the insolvency of the current employer and would have identified any untoward transfer of assets/business. The Liquidator had not advised creditors of any matters that required further investigation.
- 20.8. It did not consider that the use of the words "protected" and "paid in full" in the September 2006 Announcement was with the intention of meaning that pension benefits earned prior to 2 August 2006 were guaranteed in some way. Rather it believed it was intended to mean that accrued benefits were subject to certain protections in UK pensions law, so they could not be reduced other than in limited circumstances, so the current employer would continue to be required to pay deficit reduction contributions to the Plan. Put simply, this was just a statement of the current employer's obligations under the scheme funding legislation. It could not be construed as a promise from MAG International to guarantee that members pensions would be paid in full, not

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<sup>4</sup> As at April 2003.

least because MAG International was not mentioned in the September 2006 Announcement, and it did not come from MAG International.

20.9. As MAG International was not under any legal obligation to fund the Plan, there was no basis on which Dalriada/the Board could pursue it for the buy-out deficit in the Plan.

20.10. By his comment that the Plan had a “contingency” that was to “guarantee” the pensions under the Plan, it assumed Mr E was referring to the Debenture. The effect of the Debenture was that the Section 75 debt of MT Squared Limited was secured by a fixed and floating charge over the business and assets. The latest report from the Liquidator (up to 9 December 2020) recorded that the trustees had been granted the Debenture in 2012 and that the charge remained in favour of the new trustees, and as the sole secured creditor the Trustee had first priority claim over the net property of MT Squared Limited.

20.11. The Liquidator’s report confirmed that a sale of the assets of MT Squared Limited was agreed on 17 December 2019. The Liquidator anticipated that the net property of MT Squared Limited would be £761,193 (inclusive of the sale of assets), of which £605,955 would be paid to the trustees, and the balance to the unsecured creditors. However, these estimates did not account for future costs of the liquidation, which would reduce the net property of MT Squared Limited.

20.12. For the purposes of the section 143 valuation, the actuary had assumed that the trustees would receive a further dividend of £155,000. The Liquidator’s report suggested that the further dividend would be slightly higher than this, but this would not affect the overall outcome of the section 143 valuation.

21. Mr E asked for the decision to be reviewed. He said:-

21.1. MAG Group was responsible for funding the Plan.

21.2. It was evident from the information held at Companies House that MT Squared Limited had been run “under the control of MAG companies”.

21.3. The funding responsibilities of the MAG Group to the Plan should be investigated by the PPF, TPR and Dalriada.

22. The Board’s Reconsideration Committee upheld the Board’s decision. It said:-

22.1. MT Squared Limited was the only company that was legally responsible for funding the Plan. So, following its insolvency, a debt became due from MT Squared Limited equal to the Plan’s deficit at that time and the trustees were a creditor.

22.2. The wider MAG Group (including MAG International) did not have legal responsibility to fund the Plan or support the Plan in the event of MT Squared Limited’s insolvency.

22.3. Regarding the September 2006 Announcement:

- 22.3.1. The announcement was issued by the trustees of the Plan at the time;
- 22.3.2. Cincinnati Machine Limited was noted at the bottom of the page. MAG's logo was included, which was appropriate since the Employer was part of the MAG Group. It did not imply a commitment by the wider MAG Group to fund the Plan. It was MT Squared Limited's responsibility to do that.
- 22.3.3. Such communications were commonplace when a scheme closed to future accrual and often came jointly from the employer of the scheme and the trustees because of their collaboration and negotiation with regard to the closure.
- 22.3.4. The statement that benefits were protected and would become payable in the normal way, referred to the fact that the benefits already built up were subject to certain protections in UK pensions legislation and acknowledged the statutory funding requirements placed on MT Squared Limited. It was not a guarantee or promise by the wider MAG Group to support the Plan or pay the Plan benefits in full.
- 22.4. The Written Resolution was appointing Cincinnati Machine Limited directors, which reflected the fact that MAG International was the parent. It was normal for a company's shareholders to have the power to appoint directors of that company (subject to the articles of association) under the Companies Act 2006. It did not constitute a legally binding commitment for MAG Europe to fund the Plan.
- 22.5. The voluntary provision of financial support by the wider MAG Group to the current employer (then called MAG Maintenance UK Limited) did not constitute a legal obligation to continue that practice. A direct legal obligation, such as a guarantee, would need to be in place for continued support to be required. There was no evidence of such a guarantee.
- 22.6. The trustees of the Plan were responsible for the administration of the Plan. They were in dialogue and negotiation with the current employer regarding its funding obligations prior to its insolvency.
- 22.7. Neither the PPF nor Dalriada had the power to require a company in the MAG Group, other than MT Squared Limited who had a legal obligation to the Plan, to contribute to, or put in place support for, the Plan. Only TPR had such powers.
- 22.8. In 2012, TPR was involved in the restructuring and Plan funding negotiations. Presumably, TPR was satisfied with the agreement reached between MAG Maintenance UK Limited, the trustees and other MAG group companies and did not consider that there were grounds for exercising its regulatory powers.

22.9. Following MT Squared Limited's insolvency, the PPF and Dalriada had not identified any historic behaviour that they felt warranted referral to TPR for investigation, and TPR had not instigated an investigation of its own volition.

22.10. None of the issues raised by Mr E cast doubt on the accuracy of the Plan's section 143 valuation or demonstrated that it had not been carried out in accordance with the relevant legislative requirements.

### **Summary of Mr E's position**

23. Mr E submits:-

23.1. The Board has not investigated any of the information he has provided. He cannot afford to engage a specialist pensions lawyer. The Board has legal counsel and should help investigate: "Insolvency, Trustees, TPR, Liquidation, MAG Group, including MAG Sarl and all companies in the MAG Group".

23.2. The Plan has been moved through a maze of companies removing assets.

23.3. The MAG Group is responsible for the Plan. In the September 2006 Announcement it stated that pensions were protected and in 2008 MAG International appointed directors showing that it was still running Cincinnati Machine Limited. These directors made decisions that reduced MT Squared Limited to a service company taking the technology and running it down.

23.4. The Board's decision not to refer to TPR is "astounding". The 2012 Trustees' Report gave solid information that MAG Group was involved and that members' pensions were "sound after changes". There is no mention that TPR was involved in these changes.

23.5. All the documents held for the Plan by the trustees were shredded as requested by the administrators when previous trustees were removed, and a "single super trustee" appointed.

23.6. He is concerned that many pensioners have been misled with correspondence, with misuse of logos and titles and will not receive the pension they are entitled to and have worked for.

23.7. Assets were allowed to be sold off to form a new company using the same website, phone number and engineers of MT Squared Limited. He queries why assets were sold so cheaply and with no view to keeping MT Squared Limited running.

### **Summary of the Board's position**

24. The Board essentially reiterates the position set out in its 12 August 2021 decision and the Reconsideration Committee decision. Additionally, it submits:-

24.1. Validation checks before the Plan entered the PPF assessment period, involving a review of the historic employers and legal advice on the position,



confirmed that MT Squared Limited was the only employer with legal obligations to the Plan.

- 24.2. Mr E suggests that the current MT Squared website<sup>5</sup> is an exact copy of the original website of MT Squared Limited. The website states that MT Squared is the trading name of Aniston Limited (company number 09655133). It cannot verify what relationship (if any) Aniston Limited had with MT Squared Limited. The Liquidator's report confirmed that an agreement was reached on 17 December 2019 to sell the assets of MT Squared Limited to a third party. The purchase amount was taken into account when determining the dividend payable to creditors, including the Trustee. However, the purchaser of the assets of MT Squared Limited would not have assumed any liability to fund the Plan.
- 24.3. It understands that an employer's insolvency can be a time of uncertainty for members, and it empathises with Mr E's frustration, but it exists to provide PPF compensation and hopes Mr E can see that this provides support to him and other Plan members.

## Conclusions

### Complaint of maladministration

25. The Board has confirmed that Mr E's complaint of maladministration has not been through its complaints process. My jurisdiction to consider relevant complaints of maladministration is provided under The Pension Protection Fund (Investigation by PPF Ombudsman of complaints of maladministration) Regulations 2005 SI 2005/2025 (the **PPF Ombudsman Maladministration Regulations**).
26. A relevant complaint of maladministration can be referred to me following a decision by the Board on the matters complained of where either: the Reconsideration Committee has given a decision on those matters; or an application has been made to the Reconsideration Committee and the Reconsideration Committee has not given its decision within the statutory deadline or there is no real prospect of the Reconsideration Committee doing so.
27. There is no indication from the available information that these conditions for the referral of a relevant complaint of maladministration have been met. Therefore, in accordance with the PPF Ombudsman Maladministration Regulations, I have not accepted the complaint of maladministration for investigation and I do not make any findings on the complaint of maladministration in this decision.

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<sup>5</sup> <https://www.mtsq.co.uk/>.

Reviewable matter

28. Mr E says the wider MAG Group should fund the Plan, so that his pension is provided in full and outside of the PPF. He says his view is supported by:
- 28.1. the September 2006 Announcement;
  - 28.2. the Written Resolution;
  - 28.3. the appointment of employees of MAG International as trustees of the Plan;
  - 28.4. the 2012 Trustees' Report; and
  - 28.5. the Debenture.
29. The PPF is a statutory fund that pays statutory levels of compensation to members of eligible schemes (as defined under the Pensions Act 2004) where certain conditions prescribed by legislation are met. The Board assumes responsibility for eligible schemes where the prescribed conditions are met. The conditions include that there is a qualifying insolvency event in relation to the scheme employer and the scheme has insufficient assets to pay benefits at or greater than the level of PPF compensation. In relation to the latter, section 143 requires that the Board must either determine whether the value of the scheme's assets immediately before the qualifying insolvency event was less than the amount of its liabilities or obtain an actuarial valuation for the purpose of making this determination.
30. The Board decided that a qualifying insolvency event had occurred in relation to MT Squared Limited as the scheme employer, it approved the section 143 valuation report obtained in respect of the Plan and it decided that the Plan was eligible for entry into the PPF. Following Mr E's request for a formal review, the Board and the Reconsideration Committee decided to endorse the decision that MT Squared Limited is the scheme employer and endorsed the approval of the valuation report.
31. My jurisdiction in relation to this complaint is to consider whether the Board's Reconsideration Committee reached its decision correctly. This jurisdiction is provided under The Pensions Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005 SI 2005/2024. For the reasons detailed in paragraphs 32 - 44 below, I find that the Reconsideration Committee reached its decision correctly and no further action is required by the Board.
32. I do not consider that any of the events Mr E has cited show that MAG International, or other entity within the wider MAG Group, is responsible for funding the Plan.
33. The September 2006 Announcement was issued by the Trustees at the time. It notified members who had deferred benefits of the closure of the Plan to future accrual. It informed members that benefits earned before 28 August 2006 were protected and that the Company (Cincinnati Machine Limited) would continue to pay contributions.

34. The announcement was made on the basis of the Plan's position at that time. It did not place an obligation on the wider MAG Group to fund the Plan or pay members' benefits in full following the insolvency of Cincinnati Machine Limited/MT Squared Limited.
35. The September 2008 Written Resolution, authorised by MAG International, appointed two directors of Cincinnati Machine Limited, and Cincinnati Machine Limited subsequently appointed two employees of MAG International as trustees of the Plan. Neither event imposed a legal obligation on MAG International to fund the Plan. I agree with the Board's submissions that it is usual practice for a company's shareholders to have the power to appoint directors of that company, and the Written Resolution and Cincinnati Machine Limited's subsequent appointment of two employees of MAG International did not constitute a legally binding commitment for MAG International or other entity within the wider MAG Group to fund the Plan.
36. Mr E says the 2012 Trustees' Report gave "solid information" that the MAG Group was involved and that members' pensions were "sound after changes". He says there is no mention that TPR was involved in these changes.
37. The 2012 Trustees' Report informed members that MAG Maintenance UK Limited had approached the Trustees in 2011. It stated that MAG Maintenance UK Limited had explained that a major restructuring of MAG's European operations was likely to result in it becoming a stand-alone business, so it was necessary to strengthen its financial standing if it was to secure its long-term future. The company advised that it had taken steps to secure an agreement with MAG Europe and MAG US to release it from significant debts owed to both entities and to strengthen its negotiating position it had asked the Trustees for relief from pension contributions to the Plan during 2012.
38. The provision of financial support to MAG Maintenance UK Limited by the wider MAG Group does not, in itself, indicate that the wider MAG Group assumed responsibility for the Plan's deficit.
39. The Trustees' Report advised that after consulting with their lawyers, pension consultants, the Plan actuary and TPR, the Trustees negotiated an agreement with MAG Maintenance UK Limited which modified the employer's contributions to the Plan and secured the Debenture for the Plan. The Trustees expressed their view that the agreement and the objective of securing the company's long-term future was in the best interest of the Plan members, and that this view was supported by their advisors.
40. I note that TPR was aware of these negotiations, and it did not exercise its regulatory powers in respect of the Plan funding arrangement. The Debenture granted the Trustees a fixed and floating charge over MAG Maintenance UK Limited's business and assets should it become insolvent. The Debenture did not concern the wider MAG Group.
41. Mr E says he is concerned that many pensioners have been misled and will not receive the pension they are entitled to and have worked for. He says that MT

Squared Limited was reduced to a service company, its assets sold cheaply with no intention of keeping it running, and the assets were sold to form a new company using the same website, phone number and engineers of MT Squared Limited. He also refers the appointment of a “single super trustee” in relation to the Plan and the shredding of all Plan documents held by the former Trustees.

42. I have not found any person or entity in relation to the complaint who has been appointed into a role known as “single super trustee”. To the extent that Mr E may be referring to the appointment of a corporate trustee in respect of the Plan, as noted at paragraph 18 above, Dalriada Trustees was appointed as the Plan Trustee at the time the Plan entered the PPF assessment period. There is no indication that the appointment of trustees for the Plan had any impact on the scheme employer’s funding responsibilities or is relevant to the question of whether MT Squared Limited is the scheme employer. I have seen no evidence of blanket shredding of important documents, and copies of all documents which have been referred to were provided to me. Nor have I seen evidence that Mr E has been misled.
43. Neither Dalriada nor the Liquidator has identified any untoward transfer of assets from MT Squared Limited prior to its insolvency. To the extent that the sale of MT Squared Limited’s assets may be relevant to the question of who the sponsoring employer of the Plan is, there is no indication that the purchaser of MT Squared Limited took on the responsibility for funding the Plan. The Board has stated that the purchaser of MT Squared Limited’s assets would not have assumed any liability to fund the Plan. I find that there is no evidence to dispute this submission and it is not necessary for me to consider any wider issues regarding the purchase.
44. There is no evidence that MAG International or other entity within the wider MAG Group is responsible for funding the Plan. There is no evidence that the Reconsideration Committee’s decision regarding the sponsoring employer responsible for the Plan was reached incorrectly. The Reconsideration Committee reached a reasonable conclusion, having considered all the matters that Mr E raised in respect of its decision. There is also no evidence to discredit the Board’s decision to approve the section 143 valuation of the Plan.

I am required to investigate the referral of a reviewable matter and to determine what, if any, action the Board should take. Having investigated Mr E’s referral, I have determined that there is no action for the Board to take.

**Anthony Arter**

Pensions Protection Fund Ombudsman  
20 October 2022

## **Appendix**

### **The Plan Rules**

45. Rule 32, 'Substitution of Principal Employer' provides:

“32.1 If a person (the “New Principal Employer”):

(a) Executes a deed in favour of the Trustees under which:

- (i) he undertakes the liabilities of the Principal Employer under the Plan; and
- (ii) covenants to observe and perform the provisions of the Plan applicable to him as an Employer; and

(b) obtains the consent of the Trustees and, unless the existing Principal Employer (the “Old Principal Employer”) has been dissolved, obtains the consent of the Old Principal Employer or its liquidator; and

(c) is a person in respect of whom the Revenue approves the operation of Rule 32.2 or the operation of Rule 32.12 will not prejudice Approval,

then Rule 32.2 applies.

32.2 If the requirements of Rule 32.1 are met, then with effect from such date as the Old Principal Employer, the Trustees and the New Principal Employer agree:

(a) the Old Principal Employer shall be released from all obligations in relation to the Plan which apply to it other than as an Employer; and

(b) the Rules and all other provisions of the Plan shall take effect as if the New Principal Employer had been and is the Principal Employer.”

### **Deed of Amendment, 3 April 2005**

46. As relevant the Deed says under clauses 5 to 7 of the 'Operative Provisions':

“5. The Old Principal Employer [Cincinnati Machine UK Limited], the Trustees and the New Principal Employer [Cincinnati Machine Limited] agree that with effect from the Effective Date:

(a) the provisions of rule 32.2 of the Rules shall apply;

(b) the Old Principal Employer shall be released from its obligations in relation to the Scheme as provided for by that rule (and further as provided for below);

(c) the Rules and all other provisions of the Scheme shall take effect as if the New Principal Employer had been the Principal Employer;

- (d) the New Principal Employer shall be admitted to participation in the Scheme as an Employer; and
  - (e) the Old Principal Employer shall cease to be an “Employer” in relation to the Scheme in accordance with rule 28.1(c).
6. The New Principal Employer and the Trustees release the Old Principal Employer from all liability in connection with the Scheme whether suffered or incurred before, on or after the date of this deed and whether arising under the provisions of this deed or the Rules, under statute or otherwise to the maximum extent that they are able (including, without limitation, any liability under section 75 of the Pensions Act 1995) and the New Principal Employer will indemnify the Old Principal Employer in relation to any such liability to which the Old Principal Employer is or becomes subject notwithstanding this release.
7. The New Principal Employer covenants to the Trustees that it assumes and undertakes that it will perform and discharge any liability in connection with the Scheme which is the subject of clause 6 and any other liability of the Old Principal Employer in connection with the Scheme.”

#### **The 19 April 2012 framework agreement**

47. As relevant the Deed states:

- “1.1 MAG UK<sup>[6]</sup> is the present principal employer of the Cincinnati Machine Pension Plan (the “**Scheme**”). The Trustees are the current trustees of the Scheme.
- 1.2 MAG Europe GmbH (“**MAG Europe**”) and MAG US<sup>[7]</sup> have provided support to MAG UK in the form of intercompany loans and non-enforcement of debts. On 6 December 2011, MAG Europe served notice on MAG UK for immediate payment of certain debts they claimed were outstanding. On 20 March 2012 Lux 4<sup>[8]</sup> entered into an agreement with MAG Europe and its subsidiary MAG IAS GmbH to purchase and transfer the MAG UK Debts owed by MAG UK to MAG Europe, such that MAG UK is now liable to make payment to Lux 4 instead of MAG Europe...
- 1.3 MAG UK has not paid the Relevant Employer Contributions.
- 1.4 All Parties<sup>[9]</sup> have been negotiating in good faith regarding a potential solution which has the aim of:

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<sup>6</sup> MAG Maintenance UK Limited.

<sup>7</sup> MAG IAS LLC.

<sup>8</sup> MAG International Industrial Machinery S.a.r.l.

<sup>9</sup> MAG UK, the Plan Trustees, Lux 4 and MAG US.

- (a) avoiding MAG UK's insolvency;
- (b) ensuring the future financial viability of MAG UK; and
- (c) ensuring a better return for the Scheme than would be otherwise achieved.

1.5 This Deed documents the outcome of those negotiations.

...

5.1 Lux 4 agrees to accept the sum of ... (the "**Lux 4 Sum**") in full and final settlement of the MAG UK Debts owed to it by MAG UK...

5.2 MAG US agrees to accept the sum of ... (the "**MAG US Sum**") in full and final settlement of the MAG UK Debts owed to it by MAG UK...

...

6.1 The Trustees agree that they:

- (a) will not and will ensure that no-one on their behalf will, either now or at any time in the future, take action to recover all or part of any Relevant Employer Contributions; and
- (b) discharge MAG UK from any further obligation in respect of the Relevant Employer Contributions under the 2008 Schedule of Contributions and/pr Part 3 of the Pensions Act 2004.

...

6.3 ...the Trustees hereby confirm that, subject to MAG UK's compliance with its obligations under Clause 7.1 and Clause 7.2(c) of this Deed, MAG UK's breach of its obligations under the Rules to pay Relevant Employer Contributions has been remedied to their reasonable satisfaction.

...

7.1 Within 90 days of the Effective Date...MAG UK will pay:

- (a) the Lux 4 Sum to Lux 4's designated bank account;
- (b) the MAG US Sum to MAG US' designated bank account.

7.2 In further consideration of the above, MAG UK agrees that:

- (a) with effect from the Effective Date, the 2008 Schedule of

Contributions will be superseded and replaced by the Revised Schedule of Contributions.

...

- (c) it will meet the Trustees' professional advisors' reasonable costs in advising on this Deed, subject to a maximum of ... plus VAT;..."

### **Extract from 2012 Trustees' Report**

48. Under the heading 'Company Update':

"MAG Maintenance UK Ltd (MAG UK) the sponsoring employer to the Plan, approached the Trustees at the end of 2011 to seek relief from making contributions to the Plan during 2012. The Company explained that major restructuring of MAG's European operations was likely to result in the UK Company becoming a stand-alone business in the future and it would therefore be necessary to strengthen the financial position of MAG UK if it was going to secure its long term future.

The Company explained that steps were being taken to secure an agreement with MAG Europe and MAG USA to enable MAG UK to be released from significant debts owed to the two overseas entities. Securing this debt release would substantially strengthen the balance sheet of MAG UK and would provide a positive contribution to securing a financially viable future for the UK business.

As a further step to securing the financial stability the company asked the Trustees to agree to provide relief from pension contributions during 2012. This would give valuable breathing space to strengthen the company's financial position and would strengthen the company's negotiating position with MAG Europe and MAG USA regarding debt release.

The Trustees consulted with their lawyers, pension consultants, actuary and the Pensions Regulator regarding the company's request and after careful consideration they agreed to enter into negotiations with the company.

Final agreement was reached in May 2012 and resulted in MAG UK securing the release from debts owed to MAG Europe and MAG USA and the Trustees agreeing to modify the current company contributions schedule to provide relief from contributions during 2012. During the negotiation process the Trustees secure a legally binding undertaking from MAG UK that the Plan would have a priority over the assets of MAG UK in the future and that the company would recommence contributions to the Plan in 2013.

The Trustees were of the view that reaching an agreement with the company and enabling the company to secure its long term future was in the best interest of Plan members and this view was supported by the Trustees advisors.



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The level of contributions to be made by MAG UK from January 2013 will be in line with the Schedule of Contributions set by the recently completed 2011 Actuarial Valuation.”