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|  | <p><b>FINAL NOTICE</b><br/> <b>under section 99(4) of the</b><br/> <b>Pensions Act 2004 (“the Act”)</b></p> <p><b>The Graphex Limited Pension and</b><br/> <b>Life Assurance Scheme</b><br/> <b>(“the Scheme”)</b></p> | <p>The Pensions<br/> Regulator<br/> case ref:</p> <p><b>TM6511</b></p> |
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1. **TAKE NOTICE** that the Pensions Regulator (the “Regulator”) of Napier House, Trafalgar Place, Brighton BN1 4DW has reviewed an order made subsequent to a determination on 23 February 2009.

2. **Determination**

A hearing of a Compulsory Review (pursuant to Section 99 of the Act) took place on 25 March 2009 of the determination made under the Special Procedure by the Determinations Panel (the “Panel”) on 23 February 2009 when the Panel determined that an order be issued in the following terms:

1. Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast BT2 7BA is hereby appointed as trustee of the Graphex Limited Pension and Life Assurance Scheme (the “Scheme”) with effect on and from 23 February 2009.
2. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order to:
  - i. to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme pursuant to Section 7(3)(a);
  - ii. to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c); or
  - iii. otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d).
3. The powers and duties exercisable by Dalriada Trustees Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.
4. Dalriada Trustees Limited’s fees and expenses shall be paid by the employer pursuant to Section 8(1)(a) of the Pensions Act 1995 as amended by Section 35 of the Pensions Act 2004.

5. This order:

- i. will take immediate effect on the date of this order;
- ii. may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

3. **Directly affected parties**

The Regulator considers the following parties to be directly affected by this determination:

- (a) Mr Mark Graeme Harrison – trustee
- (b) Mr Nigel Robert Ball – trustee
- (c) Mr Alan Clark – trustee (respectively “the Trustees”)
- (d) Graphex Limited – principal employer
- (e) Rivermeade Signs Limited – participating employer
- (f) Dalriada Trustees Limited – appointed independent trustee

4. **Decision on Compulsory Review**

In carrying out its review of the determination of 23 February 2009 the Panel considered its powers under Section 99(3)(d) of the Act to deal with the matters arising on the review as if they had arisen during the Special Procedure hearing and, having done so, the Panel determined that the decision be upheld in its entirety.

5. **Reasons**

On the evidence before it, the reasons for the Panel’s decision were as previously given in the Special Procedure Determination Notice:

- i. two of the directors of Graphex and Rivermeade are trustees of the Scheme and both hold important positions in these companies. This gives rise to a conflict of interest when trying to agree on, and deal with, financial matters which will affect both of the companies, particularly Graphex, and the Scheme. The Regulator considers that Mr Ball and Mr Harrison are therefore conflicted and that furthermore they have failed to manage these conflicts appropriately;
- ii. there seemed to be an intention to strip out certain assets from the principal employer and then buy back the remaining assets in a pre-pack arrangement but without the pension liability. Some of the discussions in relation to this arrangement were being led by some of the Trustees;
- iii. any such action to put the pre-pack arrangement in place would pose a risk both to the interests of the members and to the PPF;

- iv. the Panel felt, given the above, that it was reasonable to appoint a trustee in order to:
  - (a) secure that the Trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme;
  - (b) to secure the proper use or application of the assets of the Scheme;
  - (c) protect the interests of the generality of the members of the Scheme.
- v. Despite having seen all the material that the Panel had before it on 23 February and 25 March 2009 and having been given the opportunity to challenge any or all of it, neither the Trustees nor the principal or participating employer had taken up the opportunity to do so.

## 6. Referral to the Pensions Regulator Tribunal

You have the right to refer the matter to which this Final Notice relates to the Pensions Regulator Tribunal (“the Tribunal”). Under section 103(1)(b) of the Act you have 28 days from the date this Final Notice is given to you to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Final Notice. The Tribunal’s address is: 15-19 Bedford Avenue, London WC1B 3AS (tel 020 7612 9649). The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to the Pensions Regulator. Any copy reference notice should be sent to Determinations Support at The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.

**Signed:**        *Dianne Hayter*

**Chairman:**    **Dianne Hayter**

**Dated:**        ...31 March 2009.....