

## Walking the tightrope: use and abuse of power

1. The Company is a joint venture vehicle. It was set up to market and sells olive oil on behalf of small olive farms. It has 100 members who each joined as a producer of olive oil.
2. The Company has an authorised share capital comprising:
  - Ordinary Shares
  - Capital Shares
  - Deferred Shares
3. Under the bye-laws:
  - Ordinary Shares carry rights to a capital return, to income, to vote and to trade on favourable terms with the Company
  - Capital Shares carry only a capital right and a right to vote (in each case parri passu with the Ordinary Shares) but no income or favourable trading rights.
  - Deferred Shares are in effect valueless.
4. Upon becoming a member (a “Producer-Member”), each member
  - Subscribed for Ordinary Shares
  - Made a \$10,000 loan which is non-interest bearing and not repayable so long as the member is a Producer Member.
5. Upon a Producer Member ceasing production, under the bye-laws it becomes an “Investor-Member” and
  - its Ordinary Shares are converted into Capital Shares and Deferred Shares
  - its loan becomes interest bearing at 5% pa and becomes repayable within 5 years
6. There is a very detailed shareholders agreement (“**SA**”) which supplements the bye-laws. Each Producer Member became a party to the SA on joining the Company.

7. Under the SA, at any time a number of named individuals have power to
- defer the date for repayment of any shareholders' loan
  - require members to agree to the conversion of any outstanding loan into Capital and Deferred Shares.

Although not identified as such, the named individuals are in fact all the members of the current board of the Company.

8. The price of olive oil has plummeted. The number of Producer Members has fallen to 10 (90 have ceased production). The Company is insolvent or nearing insolvency, 50% of its indebtedness being to outside (non-member) creditors. A creditor, Nasti Olio Industriale SA ("**NOI**") has issued proceedings seeking payment from the Company of \$250,000, to which proceedings the Company has no defence.
9. The Board has been approached by a white knight Bidder. At the Bidder's request/direction the Board proposes
- to allot to the Bidder Ordinary Shares carrying 51% voting control
  - to accept a 15% interest bearing loan of \$500,000. from the Bidder
  - to grant security over all the assets and undertaking of the Company to secure repayment of the loan from the bidder
  - to convert all outstanding loans into Capital and Deferred Shares
  - to introduce a new Bye-law empowering the Board to convert any issued Ordinary Shares into Capital Shares and Deferred Shares
10. The Board:-
- Seeks Members' approval of the proposals
  - In making the proposal regarding the secured loan from the White Knight has failed to consider the position of the Company's other creditors at all, including (without limitation) NOI
  - Has indicated that if that approval is forthcoming, it may well convert all existing Ordinary Shares into Capital Shares
11. As regards the proposals:

- An existing producer and shareholder, is concerned over the loss of income and trading rights attached to his ordinary shares, as well as the effect of his loan being capitalised.
- A former producer and shareholder, is concerned as to the loss of interest and rights to repayment of her loan.
- NOI is concerned about the security to be granted by the Company.