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CASE STUDIES INTO SOME OF THE LARGER INTERNATIONAL GOVERNANCE FAILURES AFFECTING THE PENSION FUND INDUSTRY

ENRON

MIRROR GROUP NEWSPAPERS
DOMINION STORES

ENRON

DEPARTMENT OF LABOUR (“DOL”)
“AMICUS BRIEF”

EMPLOYER STOCK AS A FUND INVESTMENT OPTION

The Enron case raised a number of difficult issues for funds holding employer stock including:

- Whether and what extent the fund's trustees must disclose inside information regarding the company and/or its stock to fund participants when stock is held in the fund – when such disclosure may conflict with the obligations of such individuals under US federal securities laws

- Whether 404 (C) protection is available with respect to employer stock if participants do not have all information necessary to make an informed decision as to whether to select that investment option
- The fact that fund trustees are charged with the same standard for selecting employer stock as an investment option as they are with respect to any other investment option

MIRROR GROUP

INVESTIGATION UNDER SECTION 432(2) AND 442 OF THE COMPANIES ACT 1985

- 1980 Robert Maxwell's private companies obtained a controlling interest in British Printing Corporation; Robert Maxwell became chief executive. Company subsequently renamed Maxwell Communication Corporation (MMC)

- 1984 July: Robert Maxwell's companies (private side) acquired Mirror Group Newspapers (MGN) for £113m
- 1985 – 1988 MCC and the private side's period of expansion; a number of companies of substantial worth and potential acquired.
- 1985 Pension funds commenced lending monies to private side.

- 1987 Private side incurred over £300m in borrowings taking up rights issue in MCC.
- 1988 MCC borrowed \$3 billion and acquired Macmillan and Official Airlines Guides
Autumn: Pension funds commenced lending shares to provide collateral for bank loans to private side.
- 1990 Private companies only survived 31 December year end through borrowings from pension funds and unauthorised overdrafts; bank borrowings remained at about £1 billion.

1991

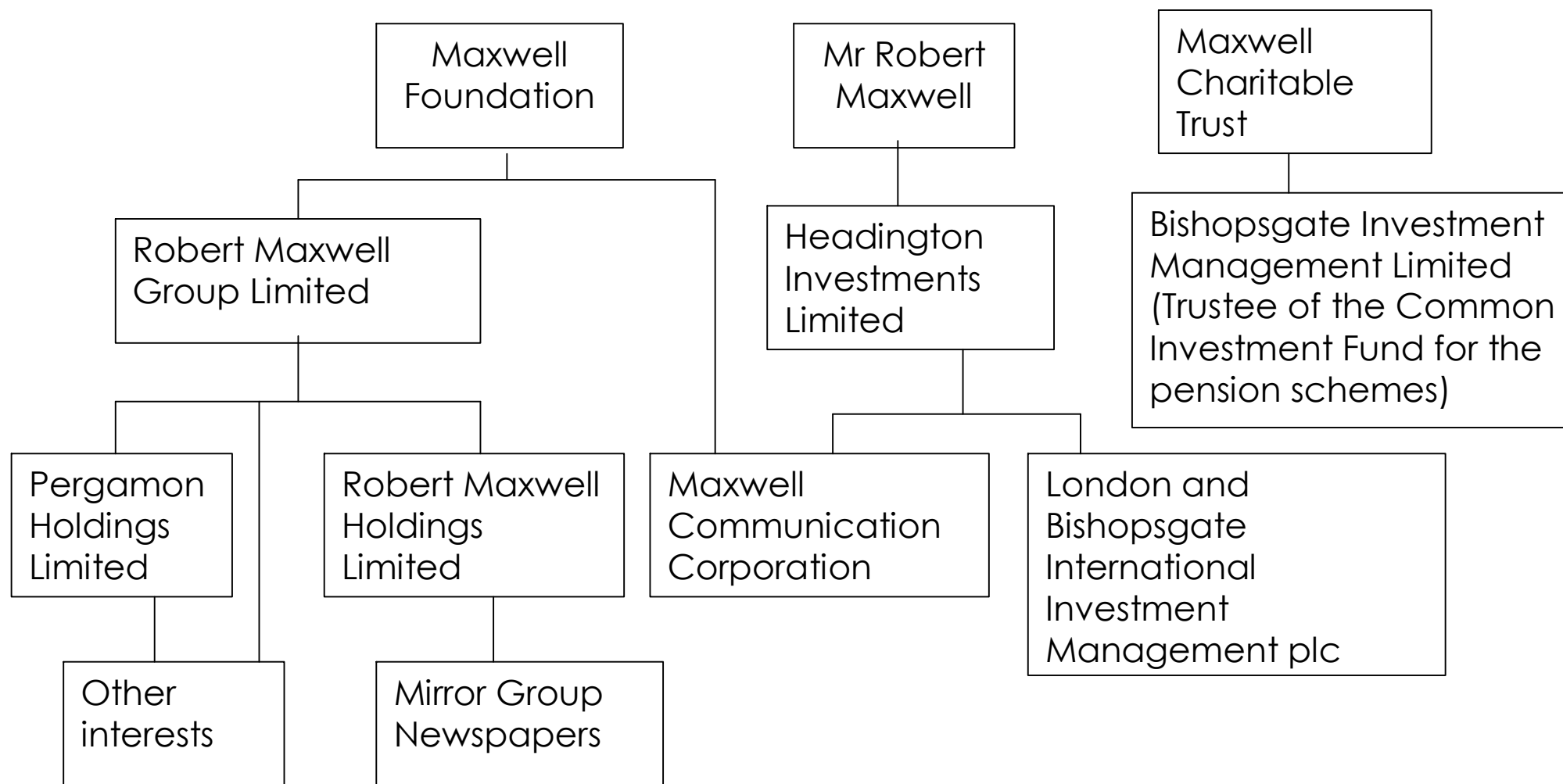
January to April: Advisers worked on flotation.

Robert Maxwell spend £105m (some through offshore entities) on MCC shares.

30 April: MGN floated – produced £210m to reduce MGN bank borrowing. At the time private side owed pension fund £100m and was using £270m of their assets as collateral; private side bank borrowings remained at about £1 billion.

- May to July: Robert Maxwell spent £72m through offshore entities on MC shares and £26m on MGN shares.
- April to November: MGN supported private side through provision of cash and use of its bank borrowings.
- 5 November: Robert Maxwell died. Empire thereafter collapsed and MGN sought support of bankers

SUMMARY



DOMINION FOOD STORES

The Pension Fund Surplus Raider

1984 \$56 million

SECTION 19(4)

MAXIMUM OF 5% invested or lent to the business of an employer participating in the scheme whereby the fund has been established

SECTION 19 (4A)

10%, if

Consulted with members

Members support

REGULATION 28 ITEM 9

CIRCULAR PF 130

- Paragraph 10.2
Every fund should have an investment policy statement (IPS)
- Paragraph 66
Fund / Employer / Sponsor relationship



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FIDENTIA

SECTION 37C

FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS ACT) 2001

Section 3 and 4