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CONSIDERATIONS WHEN SELECTING YOUR DELAWARE INDEPENDENT MANAGER

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The appointment of an independent manager to a Delaware limited liability company ("LLC"), such as the special purpose vehicle ("SPV") for financing projects, is designed to bring great comfort to lenders. However, with no requirement to vote in the event of a bankruptcy, it is crucial that the independent manager is selected carefully. They need to bring experience and knowledge, with a commitment to being responsive and serving the best interests of the vehicles to which they have been appointed to support.

Having been in place for many years, the practice of having an independent manager on LLCs and their central role in the event of the potential insolvency of an issuing vehicle, has become a familiar feature in the US real estate lending and securitisation sectors. In addition to providing a check and balance in respect of a borrower taking advantage of US bankruptcy laws, investors have also welcomed the role as it provides stronger governance to demonstrate the independence and separation of these bankruptcy remote vehicles. Independent managers are also engaged, in the context of CLOs, with risk retention units in Europe, where such rules still apply.

In all of these scenarios and dependent on the constitutional documents of the SPV, the independent manager can also help ensure the vehicles are operating as intended, not breaching covenants, properly vetting advisors and dealing with material actions such as the payment of a special dividend which had not been contemplated. With a certain level of risk inherent in any transaction, particularly with the uncertain economic conditions created by the COVID-

19 pandemic, having an experienced and reputable independent manager in place can only help hedge against the unexpected.

As we learned in the credit crisis of 2008, the essential requirement is that the independent manager will be there when needed. Although in most cases, performing this role doesn't typically require the performance of any specific ongoing duties, should the independent manager be asked to cast a vote in regard to the insolvency of an entity, time is of the essence and efficiency in this process becomes extremely beneficial. Ultimately, for the protection of lenders, the benefit of having an individual that can 'spring into action' will be compromised if the independent manager becomes timid when things get complicated. Therefore, the importance of a reliable partner fulfilling this role is crucial, as can be said for any springing member role. This was demonstrated during the last financial crisis when impasses and delays complicated already difficult circumstances.

Any analysis in this area should also take into account the highly specialised nature of the role. While the most recent economic expansion, given its length, may have led to some industry participants viewing the provision of an independent manager as a commoditised service, more thought should be given to the background and experience of the appointed individual. Just having anyone in place to meet the requirement will not necessarily resolve matters successfully, particularly in the event of a financial distress situation. Investors will appreciate the Maples Group's responsive approach, coupled with extensive knowledge of and experience across unique and complex transactions and situations. This expertise ensures matters can be concluded in an efficient manner. In addition, professional independent managers will recognise the need to consult experts, when necessary, such as bankruptcy lawyers or accountants, in order to make sound decisions. It is essential for the independent manager to remain impartial, take third party feedback on-board and make decisions based upon the facts presented.

With the Maples Group's long history in structured finance and deep relationships with many of the industry's largest and most successful participants, we have extensive experience in a variety of areas and across a spectrum of asset classes. Furthermore, our global footprint spanning 18 international jurisdictions ensures clients can benefit from our insight into the latest market developments and best practices. Working with the Group's experienced professionals in Delaware, all parties to a transaction can gain comfort that they are being supported by a knowledgeable fiduciary operating to the highest standards, who will be ready to respond to the situation at hand, particularly if something unexpected occurs.

About the Authors

Edward L. Truitt Jr.

Ed has oversight of the Maples Group's fiduciary services business in Delaware. He brings over 30 years of experience in US fiduciary services, with specific experience in the corporate trust sector. He has worked on a diverse product set that includes structured finance transactions, asset-backed securitisations, leveraged lease transactions, trust preferred securities, longevity products, banking products and a broad range of investment funds. Ed strives to provide a responsive, client-first experience that delivers the excellence that the Maples Group has become known for globally.

James Lawler

James is responsible for driving the growth of the Maples Group's fiduciary services business across the Americas. He brings nearly 30 years' experience in trusts and corporate services and has significant hands-on experience in all aspects of corporate trust, agency and special purpose vehicle administration, including transaction management and deal negotiation. He also brings deep jurisdictional knowledge and expertise in overall entity structure. He prides himself on his ability to act as an advocate for clients' needs and aims to deliver the resources necessary to address the issues they are facing. James has authored articles and spoken on panels on topics relating to the use of special purpose vehicles, and the securitisation and leasing industries.