

# **HPH Shareholders' Trusts**

## ***History and current state /Background/***

### ***Introduction***

This paper has arisen in response to various half-truths and lies proliferated by those persons who do not wish for the shareholders of the joint-stock company Harvardský Průmyslový Holding, a.s. (*Harvard Industrial Holding, JSC*) (hereinafter only „HPH“) to obtain any money, inasmuch as such fact would interfere with and crush their allegations regarding „criminals“ and “thieves“ of the shareholders' assets. This text aims to provide a practical description of the history and current state in the Trusts and it does not wish to and won't respond to some attacks coming from persons around Mr Staněk and Častorál. Let the readers pass their own judgement.

### ***Period before HPH Trusts***

In 2001 and 2002 there were attempts of some people around HPH to make at least partial distributions to persons holding HPH shares. The situation was complicated, because at that time there were disputes including the following issues: whether HPH is or is not in liquidation; who is to be the liquidator; who is a member of the Board of Directors or of the Supervisory Board etc. At a certain time contracts were concluded with HPH shareholders to enable future surrender of HPH shares and at the same time advances for such redemptions. Several thousands of such agreements were concluded yet they have never been fully performed, i.e. there was no redemption of shares, also due to the steps and declarations of the Czech Securities Commission and subsequent steps of the Board of Directors. HPH borrowed resources for such redemption from its subsidiary Daventree Resources Limited domiciled at Cyprus (“Daventree Resources Cyprus“).

This Cypriot company held a 25-% share in Kantupan Holdings Co. Ltd. („Kantupan“). It got altogether USD 139.6 million from this investment during 2001 and 2002. A part of these resources were sent to a lawyer's account České Budějovice in late summer 2001. These were still resources of Daventree Resources Cyprus, but HPH had them available for distribution of advances for future redemption and for reimbursement of related costs. When the Board of Directors decided to suspend conclusions of the said contracts, the resources were to have been sent back to their owner, i.e. Daventree Resources Cyprus. At that moment, they were frozen by the Czech Police. Over USD 20.1 million remained blocked.

In June 2002, a new Board of Directors of HPH was elected. It promised at a general meeting that it would try and ensure distribution of funds to the shareholders. One of the alternatives was to pay the assets through the so-called Trusts. Although this concept is unknown in the Czech law, it is not illegal. It is a concept which is widespread in particular in the Anglo-Saxon law. The principle is that the owner of money hands over its assets to the benefit of HPH shareholders in proportion to numbers of shares owned by them. An

administrator of these funds and a Protector will be appointed. This principle was discussed by the then Board of Directors and the Supervisory Board of HPH – both bodies were at that time valid bodies of the company and the company itself was not, pursuant to valid legislation, in liquidation - and approved. It was a procedure which was to enable distributions of at least some money to the HPH shareholders within a very short time and to not deprive them of the possibility of having share in any further assets ascertained and claimed, as in the case of share buyout. Apart from the time aspect this appeared to be one of the main advantages. This principle enabled to effect distributions regardless of on-going litigations over validity or invalidity of the decision of the general meeting to leave the liquidation and to proceed regardless of any completion of the liquidation. These aims were confirmed by the subsequent interest in distributions – I mention it herein below.

In this context yet another fact has to be mentioned. HPH owned (not held) notes/bills of exchange by which distribution for the assets sold was accomplished. The bills were due by end of 1999 and there was a threat of their limitation. With regard to failures in exacting performance out of these bills the HPH Board of Directors was forced to lodge actions regarding the bills so as to prevent limitation of the bills. The status of these proceedings or related circumstances is not the subject of the present paper.

As a consequence of all of the above circumstances and facts the prepared trust documents were arranged so as they could not have been misused by HPH debtors, i.e. by paying their shares from the Trust regardless of their debts towards HPH and in fact towards its shareholders. All documents for the establishment of the Trust were prepared to be signed at the beginning of December 2002. It was further decided that the trust would be organised under the Cypriot law and it would be founded by its subsidiary Daventree Resources Cyprus incorporated on Cayman Islands, i.e. HPH Cayman Ltd.

### ***Establishment of the 1<sup>st</sup> Trust***

At the beginning of December 2002 (more exactly on 4 Dec 2002) a Settlement was signed by and between HPH Cayman Ltd as trust founder and Daventree Trustees Ltd domiciled at Cyprus as its administrator/trustee and Mr Juraj Široký as trust Protector (hereinafter referred to as „Trust 1“).

The HPH shareholders were determined as Beneficiaries of Trust 1 and their Quotients in Trust 1 derived from their respective shares in the registered capital of HPH. The initial assets of Trust 1 consisted of funds in an initial total amount of USD 107.1 million and they were increased by USD 7.4 million to a total of USD 114.5 million in January 2003. The agreement on the establishment of Trust 1 already included the above-mentioned measure against distribution of share in assets to those persons who owed HPH howbeit a single crown.

As early as at that time there already existed documents proving that part of shareholders, in particular the Cypriot ones, had a single person who controlled them and that person was further interconnected with the main debtor of HPH, i.e. Harvard Capital Management (Worldwide) Limited (“HCMW”) and also with the guarantor for HCMW debt, i.e. Husky

Trading Co Limited (“Husky”), which was at the same time a shareholder of HPH. Not only did these shareholders belong to the same asset structure as the main debtor of HPH, but at the same time they failed to announce an action in concert and failed to make an obligatory takeover offer as imposed upon them at that time and at present by valid laws of the Czech Republic.

The HPH shareholders were informed on the establishment of Trust 1 at a HPH general meeting held on 13 Dec 2002 and also, before that date, in the daily press. The shareholders showed much interest in the information and subsequently in the distribution of shares. At the said general meeting, forms of Application for Distribution of Shares were available for the HPH shareholders – Trust 1 Beneficiaries and the interest in them fulfilled the initial expectations of Trust 1 Trustee and its Protector.

The value of Trust 1’s assets reached USD 6.90 per one Quotient. It was distributed to the Beneficiaries in the first distribution period pursuant to conditions of Trust 1. Detailed information on the course of distributions can be found on web sites of the Trust: [www.trust-hph.cz](http://www.trust-hph.cz).

### ***Establishment of Trust 2***

Following similar principles as with Trust 1, an analogous Settlement II was entered into with the same contracting parties on 6 Feb 2003 (“Trust 2”) whereas assets of Trust 2 did not consist of financial assets (funds) but of shares of Daventree Resources Limited with its registered office in Belize (“Daventree Resources Belize”). Another assets were concentrated in Daventree Resources Belize, e.g. Azeri privatisation vouchers /coupons; shares of Union Lesní brána, a.s., Intesunion, a.s. and VÚSU, a.s.; a claim against Daventree Limited seated on Cyprus; a claim against Union Lesní brána, a.s.; revenues of the legal action in New York versus the Republic of Azerbaijan; etc. and partly also financial resources. The objective of Trust 2 was to turn into cash the non-monetary assets at best prices possible and pay funds thus obtained to Trust 2 Beneficiaries. As Trust 2 owned mainly non-monetary resources (in-kind assets), there was a difference from Trust 1 in paying the value of Quotients, namely that Trust 2 enables to pay out the value of Quotients in partial instalments.

### ***Period after establishment of Trust 1 and Trust 2***

As early as after the above-mentioned general meeting held in December 2002 many Beneficiaries of Trust 1 asked for forms to apply for the distribution of their Quotients. Distributions were initially implemented via Union bank, a.s. It was the fourth largest banking institution in the Czech Republic; however, as it turned out later on, not even such size guarantees safety. Exactly at the moment when sources for distribution of Quotients for January 2003 arrived to the bank, the bank closed its offices. To get back the money was a very complicated and costly operation, yet in the end all as yet unpaid resources could be regained. For a time distributions were discontinued for that reason. After their renewal a procedure of distributions was chosen through Česká pošta, s.p., or a foreign bank, in

individual portions. Distributions were effected without any problems. Although this method is more expensive than that offered by Union banka, a.s., it is incomparably safer. In November 2003, by request of legal representatives of several Cypriot companies, a meeting was held at which distribution of shares was requested also to companies belonging under the influence of Viktor Kožený or persons close to him. However, actions were brought against all of these companies so that distribution of Quotients to them could not be performed. Then an action was brought at a District Court in Nicosia, Cyprus, by which the said companies claim distribution of Quotients. It is interesting but at the same time understandable that not only a single action was brought; instead, the group split to two parts. In one of them the Cypriot corporation Husky is the plaintiff and it is at the same time the bill guarantor. All other companies of this grouping are plaintiffs in the second action. The debt guarantor brought a separate action apparently in order to evoke an impression that he had nothing in common with the other ones. However, the documents speak for themselves. No decisions have been made in these actions up to the present.

The terms and conditions of the Trust 1 Settlement provide that the assets shall be held in US dollars or it may be invested pursuant to rules of Trust 1. However, revenues from investments in US dollars were not breath-taking in 2002 and 2003 and were not even able to cover the necessary costs of administration of assets. Hence, the Trustee decided to invest resources into instruments with higher revenue in the long run. The resources were invested via Royal Bank of Canada and Franklin Templeton Investments. In terms of revenues, these investments later turned out to be advantageous. Unfortunately, there exists a group or groups of persons who are not interested in collection of those resources by Beneficiaries of Trust 1 and Trust 2, i.e. HPH shareholders, and therefore they have tried and try to block these distributions in every possible way. One of such actions, initiated or at least supported by those persons, was the request of the Czech Police served to the competent authorities of Cayman Islands in order to freeze assets/funds belonging to Trust 1 and Trust 2, respectively. At the first stage this request was successful and the funds were blocked, above all because the Administrator of the Trust could not defend inasmuch as he only learned about the request at the moment of freezing the resources. A long and relatively expensive defence follow. It resulted in a triple victory. The Attorney General (public prosecutor) of Cayman Islands appealed against the first-instance court decision, apparently by request of the Czech Republic.

However, the Trusts were successful in the appellate proceedings as well. Hence, the Attorney General lodged another request and when he again failed to succeed in the first instance, he did not lodge any subsequent appeal.

The information on where the resources were invested was used by the companies controlled by Viktor Kožený or associated persons and within the framework of on-going litigations pending on Cyprus asked to freeze the released resources on Cayman Islands. This request was satisfied.

### **Summary regarding distributions**

Distributions may only be effected in the so-called distribution periods. Two of them were declared as yet. The last one ended on 31 December 2004. Till the end of the 2nd distribution period, i.e. by end of 2004, all valid Applications for distribution of share value delivered by 31 Dec 2004 were satisfied. Altogether 118.953 Beneficiaries were satisfied. Altogether USD 45.5 million was distributed to them. Beneficiaries of Trust 1 are also 3 Cypriot companies whose shares are owned by Trust 2. These companies have also asked for distribution of the value of their Quotient in the assets of Trust 1. Their applications as well as all other ones, which met relevant criteria pursuant to terms of Trust 1, were accepted as valid and the distributions were effected. The funds distributed became their possession and hence also the assets of Trust 2. Distributions were not performed only to companies with existing active legal actions tied to the debt towards HPH or to ownership of HPH shares. Also, Quotients could not have been distributed to those Beneficiaries who only applied for their distribution after the end of the second distribution period or whose applications did not meet the relevant terms. There are about 3 thousands of not satisfied Beneficiaries at present.

At present there are two reasons why distributions to Beneficiaries cannot continue.

One of them is that within the framework of their legal actions companies of Viktor Kožený or associated persons demanded appointment of their man as a person who should „control/inspect“ whether our information handed over to the court and regarding both the Trust 1 and the Trust 2 are correct, i.e. the so-called receiver. The second reason is that also doc. Častorál asked within the framework of legal actions brought by them to freeze the funds in the Trust. Hence, paradoxically, the Trust have become between two millstones. One of them is doc. Častorál and persons around him who demand dissolution of the Trusts, whereas the other one are the companies controlled by Viktor Kožený or persons related to him, which, on the contrary, agree with the Trust and want their Quotients to be distributed regardless of their debts towards HPH.

*Note: However, both “millstones” have forgotten that the Trusts are not an ordinary cereal grain to be crushed by them jointly or acting against themselves. What is inside of this trust grain, i.e. the property of shareholders, is protected by a hard core which prevents the content from deteriorating and disappearing in the hands of these “millstones”. A time ago I heard that in the period after the establishment of Trust 1 one person allegedly said to another: „... See, you promised me 100 million and now it’s all f...d up!“ I don’t know if it’s true. But if so, it does show something.*

It is our aim to pay out the assets as soon as possible to all Beneficiaries who do not have any debts towards HPH.

### ***Trust 1 assets and development thereof***

Let's first mention the assets of Trust 1. As already mentioned, the assets of Trust 1 consisted solely of funds in a total amount, after increase, of USD 114.5 million. This represented USD 6.90 as value per Quotient. As said above, the Trust 1 Assets must be given in USD and revenues from funds on bank accounts in USD (current or time deposit) were not excessively high at that time. It was not possible to bind the resources for a long time because of the necessity of having relatively ready a considerable amount of money. Therefore revenues from funds were only close to USD 900 thousand by end of 2003. However, costs for the same period have not been influenced by that fact and consisted mainly of costs related to distribution of Quotients and respective service, legal services, trust administration and management of funds. Altogether, including withholding tax paid, these sums reached about USD 1.3 million by end of 2003. Resources spent for recovery of money from Union banka, a.s. represented a big share of these expenses. The operations from the establishment of Trust 1 till the end of 2003 thus ended with a total loss of USD 2.3 million. Owing to that the value per share dropped from USD 6.9 to 6.77.

Therefore, the investment strategy was changed. The Trustee could afford that change also because the mainstream of distributions was already implemented in 2003 whereas in 2004 above all those people began to claim the distributions that were not influenced by the negative campaign organised by persons around Mr Staněk and Častorál. I have a lively remembrance of what these people said (as well as gradual evolution of their formulations) starting from their statement that the Trust was only a bubble and that only several friends would be paid up etc. If distributions were not blocked by lawyers of Častorál and Kožený today, they could continue to be implemented and the Beneficiaries could convert, if they wished, their shares to money.

As already mentioned above, the funds were invested in another way and there was a significant improvement in terms of revenues. The total costs of 2004 reached USD 2.257 million whereas revenues for the same period exceeded USD 2.138 million. The operations of 2004 thus ended with a loss of mere USD 119 thousands. Altogether the Beneficiaries were distributed over USD 45.4 million in the period from the beginning of the Trust till the end of 2004 (see chapter Distributions). Hence if we converted the value of assets per Quotient at the end of 2004, the value would be slightly above USD 6.75 USD per one Quotient. The positive development in terms of both revenues and costs continued, however, final results for 2005 are not yet available due to the appointment of Kožený's receiver. The Beneficiaries were able within the framework of distributions of Quotients from Trust 1 to give part of the money to charity. Altogether, the foundation „Nation to Children“ at the clinic of children's haematology and oncology of the Teaching Hospital in Prague gave more than USD 25.680 USD, i.e. over CZK 676 thousand.

### ***Trust 2 assets and development thereof***

As has already been above mentioned, shares of Daventree Resources Belize were put into the assets of Trust 2 at its establishment. Here an in-kind (non-monetary assets) were

concentrated together with part of resources serving to cover costs of the litigation in New York with the Republic of Azerbaijan. After its establishment, the assets of the Trust 2, via Daventree Resources Belize, three companies with its registered office in the Czech Republic (Intesunion, a.s., VÚSU, a.s. and Union Lesní brána, a.s.) consisted of the following: a receivable from Union Lesní brána, a.s. exceeding USD 6.23 million and a receivable exceeding USD 40 million from Daventree Limited with its registered office at Cyprus; more than 1.8 million voucher books for privatisation in Azerbaijan and also related „options“. Also Kantupan (25-% share), HARMS HOLDINGS CO.LIMITED together with its subsidiary DENE SHIPPING LIMITED and later on also BERIO HOLDINGS Co. LIMITED became parts of the Trust 2 assets. Some of these assets were only acquired after establishment of Trust 2 as a partial reimbursement of debt of Daventree Limited or as encashment of a residual share in property of Kantupan. In some cases it is difficult to determine the real value of assets of Trust 2 (e.g. as to the coupons for privatisation in Azerbaijan, market/fair value was used, but if the whole package were sold, the market price would be much deformed and could drop to zero). But an estimate can be made that the real value of assets of Trust 2 exceeded USD 47 million, mostly in non-monetary assets, by end of 2004. If the distributions had not been blocked by firms controlled by Kožený or related persons, or by doc. Častorál, it would be realistic to consider partial distribution of Quotients in Trust 2 at about 1-2 USD per Quotient. However, these considerations are premature with regard to the current situation. Since there were voices criticising the fact that the assets of Trust 2 is held in Belize or through a Belize company, it was decided to transfer the assets to Europe. Although this is not an ideal solution in terms of taxes, the transfer was implemented also with regard to views of the Beneficiaries. Slovak companies TASS HOLDING, a.s. and TASS INVEST, a.s. were founded through which the assets of Trust 2 is now controlled. The current value of assets of Trust 2 is somewhere between USD 40-45 million.

This amount does not include the effective market value of Azeri coupons. Market value is assessed at only about at USD 11 million; however we believe that the value of the whole package is several-fold higher. The coupons were sold from the assets of the Trust provided that the exact price would be determined with regard to the final realised value. The estimated value for final settlement of the redemption price is expected to be multiple of the current market price. In such case the value per Quotient would be between USD 7.00 and 10.00. Even here, however, doc. Častorál and his people try to act in a destructive way. In connection with a person who demanded a very high sum for the issue of coupons from the deposit without any problem, they attempt to puzzle the buyer by claiming that Trust 2 is not and has never been owner of the vouchers. It has been found out from the inspection of the number of vouchers on their transfer to the state depository that the difference in the number of vouchers deposited with Partner Investment and the number of vouchers taken away is about 150,000 voucher books to the detriment of Trust 2.

### ***Current state of Trust 1 and Trust 2***

As has been stated in the foregoing text, the possibility of distribution of the value of Quotient in Trust 1 is restricted due to the pending legal proceedings initiated by motions of doc. Častorál and Cypriot companies controlled by Viktor Kožený or persons close to him. Apparently, both parties have different interests, but the outcome of their conduct is always the same and unambiguous. Due to them, distributions of Quotients to Beneficiaries cannot be effected at present nor can partial distributions of Quotients in Trust 2 be commenced. As to the Cypriot companies, I understand that their interest in distributions to other Beneficiaries is minimal and they thus can use them as “hostages” in promoting their interests - unsuccessfully, as yet. As for doc. Častorál is concerned, however, this effort is peculiar taking into consideration his many a time declared endeavour of defending interests of the shareholders, inasmuch as the HPH shareholders, as stated above, have at the same time become Beneficiaries in both Trusts without losing their HPH shares, i.e. their proportion of HPH assets. Although the Trustee of both Trusts currently tries to defend the interests of the Beneficiaries, he is bound by judicial decision. The Trustee of both Trusts will continue to take any and all necessary measures to defend interests of the Beneficiaries regardless of personal interests of Messrs Častorál, Staněk, Kožený etc.

Prague, 30 April 2006