BARNETT WADDINGHAM
beyond the expected

Corporate transactions and restructuring

Barnett Waddingham's expert advisers can provide guidance on the pensions and benefits aspects of any corporate activity, whether you are a buyer or a seller in any stage of an M&A transaction or planning some manner of corporate restructuring or refinancing.

At the core of our approach is a focus on the specific circumstances of each project, providing expert advice which reflects an understanding of the company and its business objectives. Our pragmatic, specialist advice is designed to take account of the bigger picture, identifying priorities and opportunities in the context of the overall project which could otherwise be lost on a piecemeal approach.

Whilst defined benefit (DB) pension arrangements are generally the most significant element of benefit provision in the context of corporate activity, our Employer Consulting team have expertise in all areas of employee benefits and are also able to advise on defined contribution pension requirements and wider employee benefit provision.

Dealing with a stronger Regulator

There are a number of stakeholders involved in such projects, and in particular companies will need to consider the views of The Pensions Regulator (TPR), whose powers around corporate activity are due to be strengthened by the next Pensions Bill. This covers some amendments to TPR's anti-avoidance powers (e.g. Contribution Notices), as well as the introduction of new powers around the provision of information around corporate activity.

> 'Wilful or reckless behaviour' in relation to a pension scheme could also lead to criminal sanctions under the new regime.

With that said, this should not be seen as a barrier to corporate activity; our consultants are experienced in dealing with TPR and are well-placed to help you deal with the new requirements, whether this is drafting a 'declaration of intent', responding to information requests or submitting a formal application for clearance where this is deemed necessary.

CASE STUDY

Our client was looking to re-acquire a company which would involve taking over responsibility for a number of different DB pension arrangements. We were asked to advise on the risks relating to the acquisition of these pension arrangements and an appropriate adjustment to the transaction price to take these risks into account.

Our analysis, provided in very short timescales, suggested that a larger price adjustment than had been proposed would be appropriate, to reflect additional risks that had not been factored into the initial price proposal. Following a number of different iterations reflecting ongoing negotiations, our client ultimately paid a lower price for the acquisition of the new company.

We have subsequently assisted the client in deciding upon its future strategy now that it has acquired these new DB arrangements.

Mergers & acquisitions

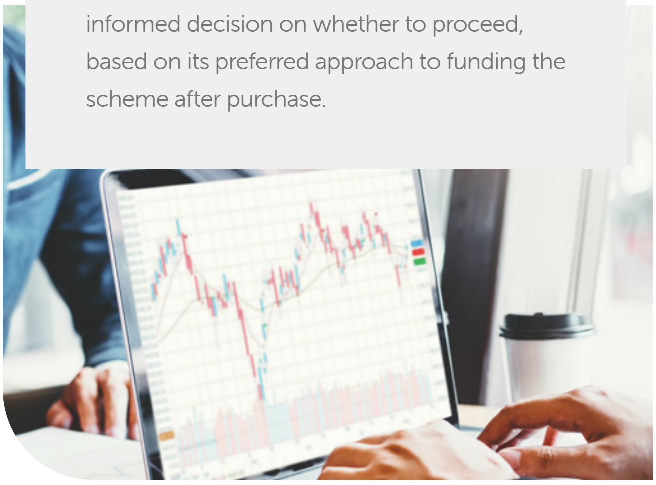
We advise exclusively on the pensions and benefits issues of a deal, rather than trying to also cover the legal, audit and covenant advice in a single sweep. Not only does this help to ensure the highest levels of expertise, but allied to our independence we believe this unbundled approach provides our clients with greater flexibility to concentrate on the issues that are most important to the successful completion of the transaction. We seek to understand the company's business and present clear, straightforward advice with practical ways to resolve any issues.

CASE STUDY

We were engaged by a multinational business headquartered in Europe, to advise on pension matters associated with the purchase of a business with significant UK pension liabilities.

The client needed to quickly establish the expected cash cost of the UK pension scheme so that they could form a view on how they would approach funding and investment matters after a transaction. Following our initial advice, we were able to identify with them a number of scenarios for further modelling.

We modelled the potential cashflow from the company to the scheme in each of the scenarios so the client could integrate this with their valuation model for the business. The client was then able to quickly make an informed decision on whether to proceed, based on its preferred approach to funding the scheme after purchase.



An important part of the transaction process for the company is the management of the relationship with any scheme trustees, and it needs to consider how the trustees will perceive, and potentially react to, the issues. We believe that negotiations should be robust, but collaborative, in order to achieve the best outcome, and aim to provide reasoned and justifiable advice in response to any challenges that arise.

Advising the seller

We can support a vendor due diligence process both in the run-up to a transaction and throughout the negotiation process, with an overall aim to improve the price achieved and ensure that the transaction goes through efficiently.

1. Preliminary assessment – pre-transaction review

- Identifies risks or issues which could be raised by prospective purchasers and suggests how these might be mitigated in advance of going to market
- Reduces the risk of unexpected issues arising during the transaction, which could have timing and price consequences

2. Full due diligence and transaction – seller transaction advice

- Support seller due diligence process for prospective purchasers, making sure that all relevant information is included, hosting documents in a secure data room if required
- Advise on pricing negotiations with buyer, within overall deal context
- Support any negotiations with the trustees and TPR
- Assist with regulatory clearance if appropriate, including assessing merits of an application and any associated mitigation

Advising the buyer

For a company purchasing a business, we can advise at each key stage of the transaction process. The key objective is to ensure that the buyer understands the pension risks being taken on and the impact these might have on the future of the business being bought.

1. Preliminary assessment – initial feasibility study

- Identify any potential 'deal breakers' at an early stage, ensuring time is not spent on a deal that will ultimately fail due to a pensions issue
- Assess the realistic pensions costs being taken on, both on a funding, accounting basis and buyout basis
- Illustrate the potential impact of post-completion pension strategy options
- Advise on regulatory issues and considerations

2. Full due diligence and transaction – buyer transaction advice

- Full due diligence process on all of the financial costs and risks, including accounting implications
- Advise on pricing negotiations with seller based on the funding position of the arrangement, within overall deal context
- Support any negotiations with the trustees and TPR
- Assist with regulatory clearance if appropriate, including assessing merits of an application and any associated mitigation
- Planning of future pensions strategy and effective mitigation of pension risks
- Advise on setting up new pension arrangements (if required)

3. Post completion actions – ongoing advice to help manage the financial impact of the pension arrangements over the longer-term

- Discuss and agree pensions strategy, based on advice provided previously, which could include managing the impact of the deficit on the potential sale price for a subsequent planned exit
- Assist with implementation of the strategy, which could cover
    - Changes to scheme benefit design, including possible closure to future accrual
    - Liability management exercises
    - Proposals for asset-side de-risking
    - Use of buyout or buy-in bulk annuities for some or all members
- Advice on ongoing issues, such as
    - Negotiating with the trustees on scheme funding
    - Pension Protection Fund levy management

Corporate restructuring and refinancing

With pension schemes increasingly becoming major stakeholders in corporate restructuring and refinancing, it is important that companies address pension issues proactively to ensure they survive while at the same time improve the prospects for pension scheme members.

The pensions issues associated with corporate restructuring are often not considered until well into the process, meaning that statutory Section 75 debts can be inadvertently triggered. This will delay the process and cause often unnecessary complications, particularly in multi-employer schemes. Similarly, refinancing activities that have a potential impact on the pension scheme's place in the priority order could result in further scrutiny.

We would work with the company to ensure that any potential pitfalls have been considered before the restructuring or refinancing goes ahead. In many cases the restructuring or refinancing is essential for business reasons and so we can work with you to make sure the pensions issues do not make the process any more complicated than it needs to be.

CASE STUDY

Barnett Waddingham were appointed to provide advice to a UK company that had an underfunded DB scheme that was a drain on investment. To enable it to make its pension contributions it was propped up by its family owned German parent company, which had taken no dividends from the UK company.

Initially, the client's objectives were to reach a compromise where the parent would make a cash injection to enable the scheme to secure benefits in excess of what would have been provided by the Pension Protection Fund, but less than their full benefit entitlement. However, it soon became clear that TPR would be unlikely to agree to this given a change in approach.

The objective then became to buyout full scheme benefits as efficiently and cost-effectively as possible. Despite the scheme being not especially attractive to the bulk annuity insurance market (predominantly due to its size), we were able to obtain an annuity quotation which proceeded to transaction very smoothly and within the client's timescale and cost expectations. This allowed the scheme to be wound up and gave the parent company the opportunity to restructure the UK business having already dealt with the pension scheme.

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively get in touch via the following:

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