Corporate activity / lending transactions with defined benefit pension schemes

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Checklist for company directors and financiers

The Pension Schemes Act 2021 significantly widened The Pensions Regulator's (TPR's) powers. Anyone carrying out corporate activity or lending transactions should be aware of the impact their deals may have on any related pension schemes – particularly if there are defined benefit (DB) schemes.

This briefing is a list of the types of DB pension questions that may arise on corporate deals and lending transactions. We hope it is a useful reminder to anyone connected with those types of deals.

DB Pensions Considerations

Basic position

What impact is there on the DB pension scheme?

You will want to think about:

- What impact is there on the covenant support for the scheme?
- What is the funding position of the scheme?
- What is its long-term plan?
- On a corporate transaction (and in particular on an asset sale), what is the plan for sale proceeds?
- Are dividends being paid?
- Is security being granted (in priority to the pension scheme)?

Managing potential for conflicts of interest

- Who are the key decision makers? Are they also pension scheme trustees?
- If yes, how is the potential for conflicts to be managed?
- What is the relationship with the trustees? Would it be helpful to appoint a professional trustee?
- What is the process for information sharing with the Trustees? (See also below re "notifiable events").

Moral hazard and criminal and civil sanctions including the Pension Schemes Act 2021

TPR has various criminal, civil and anti-avoidance powers to ensure scheme sponsors honour their pensions liabilities.

Considering moral hazard risk (ensuring there is none) is a highly complex area requiring specialist advice, but the types of questions that will be relevant include:

- Might any action be seen as steps to avoid a pension debt?
- Could there be material detriment to the pension scheme (or to the covenant supporting it?)
- Will the transaction weaken the insolvency recovery of the Scheme?
- Will the transaction diminish the sponsor's resources?
- Can the effect of the transaction be mitigated?
- Have any similar steps happened in the past? (If yes, how long ago?)
- Has legal advice been sought? (This may help support a defence to some anti-avoidance action).
- Has the pensions analysis been recorded? Is there an audit of decisions taken on professional advice?
- To what extent are group companies connected or associated with the scheme sponsor?
- What is the financial position of the various entities?
- To what extent are group companies involved with the DB scheme?
- Is Clearance worth exploring? (This is a regulatory procedure that involves TPR confirming ("clearing") that it will not use its powers in relation to a transaction).
- Does the transaction include a "notifiable event" which must be notified to TPR?
- The list of notifiable events is expected to expand shortly. What about the incoming events?
- Is there information to pass to pension scheme members? This will mostly be the trustees' responsibility but company directors might want to help with messaging.

Interested to know more?

Our leading team of Pensions legal and regulatory lawyers is ideally placed to assist both trustees and pension scheme sponsors.

We work closely with our Corporate, Funds, and Banking and Finance colleagues and have significant experience of complex, high-value restructurings in both solvent and insolvent/distressed scenarios.

To understand more about the new regulatory powers, key defences and the practical steps to consider for certain business events, readers may want to consider our free Pension Schemes Act 2021 Triage Tool, which can be accessed here.

If you would like to speak to a member of our Pensions team about how we can help your corporate or lending transaction, please contact Director Chris Brown using the details here.

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