

Mergers and Acquisitions

One of the most financially significant aspects of a corporate transaction is often a pension scheme deficit. The complexity of the issues involved make it crucial for the purchaser and vendor to take specialist independent advice.

The Pensions Regulator and scheme trustees now play a much greater role in the deal process, making it vital for advice to be sought at an early stage to identify and resolve any pension scheme issues that could otherwise delay the deal.

Barnett Waddingham's specialist consultants provide expert advice to employers on the pension issues associated with commercial transactions. Our approach is to investigate the specific circumstances of each deal and present straightforward and practical advice with suggested ways to resolve any issues. Our advice is designed to take account of the bigger picture and so identify opportunities that would be lost on a piecemeal approach.

Our clients benefit from our wide-ranging experience advising both trustees and employers on all aspects of commercial transactions. Our aim is to ensure a smooth process in negotiating with the trustees and the Pensions Regulator as necessary, whilst helping an acquiring employer to be realistic about the obligations being taken on.

Support throughout the deal process

Whether buying or selling a business, if pension schemes are involved due diligence will be required at some stage of the transaction (preferably early on). We offer a range of services to buyers and sellers:

Advising the Seller

For an employer already considering a sale, we can advise throughout the negotiation process. Alternatively, we can carry out a "Pre-Transaction Due Diligence Review" in preparation for a sale in future.

Pre-Transaction Due Diligence Review

Our "Pre-transaction due diligence review" involves a thorough review of your pension scheme(s) and produces a report covering the following items that could help to identify any current pension scheme risks:

- Issues that would be raised by a purchaser and hence stall a deal

- Key financial information relating to the scheme
- A library of important documentation to present at the tender process to any would-be purchasers
- A conflicts resolution plan for the employer
- A summary of the key risks and potential mitigations of these risks

The employer will then be confident that areas of uncertainty and risk have been identified, quantified and generally mitigated. Comprehensive scheme documentation would be available to pass to a purchaser. This limits the amount of time spent negotiating pension terms and reduces the justification for a purchaser to request a margin in the price to reflect uncertainty surrounding the pension scheme.

Having all this information in a readily accessible report, which can be periodically updated, will not only help employers understand the issues posed by their scheme but also help potential purchasers understand the scheme and thereby facilitate a smooth tender process.

Seller Due Diligence

The requirements of the Employer Debt Regulations on ceasing to participate in a multi-employer scheme and the "Clearance Process" for corporate transactions mean there are a number of issues that sellers need to be aware of when negotiating pension issues. Where Clearance is desirable the process will also involve the trustees and their advisers who will be looking to obtain the best deal possible for the scheme members.

We have significant experience of dealing with the Pensions Regulator that enables us to structure successful Clearance applications. Whilst the Employer Debt Regulations are primarily a legal issue, we can help quantify any potential risks that are identified.

In addition, we can help employers decide whether to seek clearance as this may not always be the best route.

Advising the Purchaser

There are a number of stages where professional advice could be required. To facilitate understanding of the risks and implications of taking on a deferred benefit pension scheme, we offer services ranging from an initial review to decide whether a deal involving a pension scheme should be considered, to advice through the due diligence process and beyond, as well as advice on measures to control risks and costs going forward once the acquisition is complete.

Initial Due Diligence Feasibility Study

Given the potential risks of taking on a deferred benefit scheme, it may be that an initial feasibility study can identify any "deal breakers" at an early stage so that time is not spent on a deal that will subsequently fail due to a pensions-related issue. Undertaking a feasibility study at an early stage will ensure that only viable deals are progressed further.

Full Due Diligence

We can assist in a full due diligence process so the purchaser can ensure that the risks and costs associated with the pension scheme are identified and factored into the purchase price. We can also provide information regarding the accounting implications of a defined benefit pension scheme and how this may impact on both current and future balance sheets and profit and loss accounts in differing scenarios.

We can ensure a thorough review of the seller's pension scheme is undertaken and any important issues are highlighted to aid the negotiation process and also assist in negotiations with the trustees and the Pensions Regulator. We can also help the purchaser complete a Clearance application and negotiate issues raised as part of the Clearance process.

Post Deal

Post completion we can help the purchaser to implement risk reduction measures and assist in negotiations with the trustees on investment policy, scheme funding assumptions etc. Even after ensuring the purchaser understands the risks it is taking on, additional risk reduction strategies can be implemented following the deal to manage costs and risks over the long term, including:

- Buy-out or buy-in exercises
- Transfer value enhancement exercises
- Changes to scheme design
- Investment strategy reviews
- Negotiating with trustees on scheme funding assumptions
- Management of PPF levies

For more information

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail.

Alternatively, please email:

CorporateConsulting@Barnett-Waddingham.co.uk

Barnett Waddingham - APRIL 2010

Chalfont Court
Hill Avenue
Amersham
HP6 5BB
Tel: 01494 788100
Fax: 01494 788800

Rigby Hall
Rigby Lane
Bromsgrove
B60 2EW
Tel: 01527 559111
Fax: 01527 559222

St James's House
St James's Square
Cheltenham
GL50 3PR
Tel: 01242 538500
Fax: 01242 538501

163 West George Street
Glasgow
G2 2JJ
Tel: 0141 243 4400
Fax: 0141 243 4432

West Riding House
67 Albion Street
Leeds
LS1 5AA
Tel: 0113 394 3700
Fax: 0113 394 3760

Port of Liverpool Building
Pier Head
Liverpool
L3 1BW
Tel: 0151 235 6600
Fax: 0151 235 6640

Cheapside House
138 Cheapside
London
EC2V 6BW
Tel: 020 7776 2200
Fax: 020 7776 3800

Barnett Waddingham LLP is a body corporate with members to whom we refer as "partners". A list of members can be inspected at the registered office.

Barnett Waddingham LLP (OC307678), BW SIPP LLP (OC322417), Barnett Waddingham Investments LLP (OC323081), and Barnett Waddingham Actuaries and Consultants Limited (06498431) are registered in England and Wales with their registered office at Cheapside House, 138 Cheapside, London EC2V 6BW.

Barnett Waddingham LLP is authorised and regulated by the Financial Services Authority and is licensed by the Institute of Actuaries for a range of investment business activities. Barnett Waddingham Investments LLP and BW SIPP LLP are authorised and regulated by the Financial Services Authority. Barnett Waddingham Actuaries and Consultants Limited is regulated by the Institute of Actuaries in respect of a range of investment business activities.