

Corporate Restructuring and Clearance

With pension schemes becoming increasingly significant in corporate restructuring, it is important that employers address pension issues proactively to ensure their survival while at the same time protecting the benefits of pension scheme members. The pension issues associated with corporate restructuring are often not considered until late in the day meaning that statutory Section 75 debts can be triggered inadvertently, delaying the process and often causing unnecessary complications and cost.

Barnett Waddingham's specialist consultants can provide expert advice on the pensions issues that need to be considered by employers who are considering any form of corporate restructuring. We work with the employer to highlight any potential pitfalls before action is taken. In many cases the restructuring is essential for business reasons and we work with the employer to make sure the pensions issues do not make the process any more complicated than it needs to be.

Below are some points that should be considered before corporate restructuring is undertaken.

Moral hazard provisions

The Pensions Regulator has certain powers designed to protect against companies and individuals avoiding pension debts and their liability obligations. These powers are known as the "moral hazard" provisions and include:

- Contribution notices – a contribution notice can be issued when, in the eyes of the Pensions Regulator (TPR), the effect of an act or failure to act is materially detrimental to the likelihood of accrued scheme benefits being received by members and where one of the main purposes of the act (or failure to act) was to avoid a Section 75 debt being paid in full. Contribution notices potentially have a long reach and can be issued to parties as diverse as the parent group of the sponsoring employer down to an individual company director.



- Financial support directions – these can be issued when TPR can show that a scheme employer is insufficiently resourced and its resources amount to less than 50% of the pension scheme deficit (calculated on a full buy-out basis). Financial support directions are more flexible than contribution notices and can direct the recipient to put in place a financial guarantee or simply to make a contribution to the scheme. If the recipient fails to comply with a financial support direction then TPR can issue a contribution notice to enforce its terms.

We work with employers to ensure that the risk of triggering a contribution notice or financial support direction in the future by any proposed action is minimised. Alternatively, we highlight whether a clearance application to TPR as discussed below is advisable in specific circumstances.

Clearance

The clearance procedure allows businesses to receive confirmation that specific corporate activity will not result in a contribution notice or financial support direction being issued in future.

TPR needs time to approve clearance applications and it is therefore important that applications are made as early as possible in the process to ensure that this does not delay a restructuring process.

We have considerable experience in advising companies who wish to apply for clearance. TPR generally prefers pension scheme trustees to be in agreement with the clearance application and we can help companies negotiate with trustees as required.

Employer cessation events and scheme apportionment

An employer cessation event occurs in a multi-employer scheme when one of the participating employers ceases to have any active members in the scheme whilst other employers continue to do so. This could be due to the participating employer leaving the multi-employer group but it could simply be due to a natural decline (to zero) of active members employed by the participating employer. When an employer cessation event occurs, a statutory Section 75 debt generally falls due, equal to the exiting employer's share of the full buy-out debt. This can be a considerable sum.

It is important that companies are aware of the potential events that might trigger an employer cessation event. There are ways of dealing with this issue in the light of trustees' general requirement for full payment of the debt upfront to enhance the security of members' benefits.

We can help companies plan ahead for possible events that may trigger a Section 75 debt and look at the different options for dealing with them.

Under a scheme apportionment arrangement some or all of the employer's Section 75 debt is apportioned amongst the remaining employers in the scheme. To do this the scheme trustees must be satisfied that the 'statutory funding test' is met. The arrangement can be approved by the trustees before or after an employer cessation event, but ideally the employer would obtain the trustees' agreement (which will generally involve a trade-off with them) to such an arrangement before going ahead with the restructuring.

After a scheme apportionment arrangement, the remaining employers will be liable for a larger share of the Section 75 debt should they exit the scheme in the future.

Another option is to enter into a withdrawal arrangement. Under a withdrawal arrangement, the exiting employer pays part of the Section 75 debt (based on its share of the technical provisions debt) and a guarantor agrees to be responsible for the remainder. These arrangements may need to be approved by the Pensions Regulator in certain circumstances.

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:

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