This note draws attention to some common legal and practical issues.

glossary

AE	automatic enrolment
DB	defined benefits or final or average salary
DC	defined contributions or money purchase
DIS	death-in-service (usually a lump sum benefit)
GPPP	grouped personal pension plan
OPS	occupational pension scheme
PPS	personal pension scheme
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006

typical transactions

1 share purchase The buyer acquires the target company and everything that goes with it. The nature of the target and its scheme affect the pension consequences.

(a) Independent company with its own DC and DIS schemes. Possibly no serious (or any) pension worries.

(b) Independent company with a DB scheme (normally closed to new members and probably closed for accrual of benefits). The main risk is the cost of funding any deficit, so buyers prefer to buy assets.

(c) Subsidiary in a group of companies participating in another group company's DC and DIS schemes. Commonly the seller requires the target's employees to cease active membership of group schemes.

(d) Subsidiary in a group of companies participating in another group company's DB scheme. In addition to the cessation of active membership, a pension debt might be triggered

2 assets purchase The buyer acquires only assets and often takes no liabilities. The employees in the business will pass automatically to the buyer under TUPE on the terms of their existing contracts.

(a) Personal pension schemes, including GPPPs pass under TUPE.

(b) Rights under OPSs to benefits on old age and invalidity and for dependants do not pass under TUPE.

(c) Active members of the seller's OPS are entitled to an alternative pension scheme from the buyer.

(d) Rights under a stand-alone DIS scheme almost certainly pass under TUPE.

(e) If the seller's scheme applies to only the transferring employees, the buyer might voluntarily take the seller's scheme, in which case, broadly speaking, 1(a) or 1(b) above apply.

3 contracting-out These transactions are usually a form of TUPE transfers but outsourcing contracts from government and other public sector bodies are subject to a policy principle (Fair Deal), which requires transferring employees to be given pension rights equivalent to those in their former employment. Old Fair Deal required the transferring employees to be put into a scheme giving broadly comparable benefits to those in the relevant public sector scheme. Under New fair Deal, which applies to central government schemes,

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transferring employees may remain in their public sector scheme and in some circumstances may transfer back into it. The Local Government Pension Scheme has long since admitted contractors to it as an alternative to providing a broadly comparable scheme. The rights of transferring employees in the LGPS are governed by the 2007 Direction rather than New Fair Deal.

traps and problems

4 The following can apply in one or more of the circumstances in 1 and 2 above.

(a) pension debt If the target company leaves a multi-employer DB OPS, as in 1(d) above, and at least one other employer employs an active member of it, the target is liable for a share of the scheme deficit, unless an apportionment or withdrawal arrangement is made.

(b) Beckman rights Pension rights not for old age, invalidity or dependants in an OPS (2(b) above), often, as in Mrs Beckman's case, for an unreduced early retirement pension on redundancy, pass under TUPE without any funding to meet them. Employees, in both share and assets deals, can have Beckman rights as a result of previous TUPE transfers.

(c) grieving widow syndrome If, on a TUPE transfer (2(d) above) or a share sale in which active membership ceases on completion (1(c) above), DIS insurance is not in place at completion, an employee might die immediately after completion, so the buyer will be met the next morning by a grieving widow with a babe in arms asking how much she will get, which will have to be paid out of the buyer's resources.

(d) hidden DBs The new definition of "money purchase" can result in the target's or the seller's DC OPS having DBs and therefore the risk of a deficit and the obligation to comply with the statutory scheme specific funding regime. This can apply to 1(a) and (c) above but if in 1(c) might result also in a debt under 4(a) above.

(e) buyer's GPPP A buyer under 1(a) or (c) or 2(a) might wish to put the target's employees or the transferring employees into its GPPP at unchanged contributions rates, but the employees' contract right might be to belong to the scheme they were in before completion.

(f) increased DC expenses Even if under 1(c) or 2(a) above, the buyer permits employees to remain in the same PPS as before, the provider's fees and expenses might be higher than they were under the seller's GPPP.

(g) automatic enrolment AE obligations are personal to the employer, so compliance by the seller under 2 above is not compliance by the buyer. If 1(a) or (b) applies, and the buyer does not change the pension arrangements, the target's AE arrangements are unchanged. If under 1(c) or (d) the employees cease to be active members of the seller's group schemes, the buyer must enrol them automatically into an AE pension scheme. The buyer's AE obligation applies to all the transferring employees under 2 above, unless the buyer maintains any of the employees' PPSs or becomes the employer of any OPS under 2(d) and those scheme are either AE or qualifying schemes. If, in any of the circumstances in 1 and 2 above, the scheme in which the employees are or become active members after completion are qualifying schemes in respect of them, the target or the buyer will have no obligation to enrol them into an AE scheme.

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