Pension schemes in which the sellers are the only or the main members need to be treated differently from pension schemes whose main purpose is to provide death in service and retirement benefits for employees. Owners' schemes are usually small schemes (still often referred to as small self-administered schemes, SSASs) but can include "ordinary" occupational pension schemes and so-called "executive schemes".

What distinguishes these from schemes for employees is that owners see their schemes as part of their own assets, but on a sale of the owners' company, control of the scheme and its assets passes effectively to the company's new owners. The following are some ways in which control can be exercised by a company to the detriment of the former member using powers typically found in pension scheme trust deeds:

1 power to remove and appoint trustees;

2 power to change the trust deed and rules

3 power to change the investments;

4 power to admit new participating employers;

5 power to admit new members; and

6 power to refuse to permit early retirement.

Usually the trustees have no power to control item 1, so that even if, as is common, the other powers require the consent of the trustees, the exercise of the power of appointing new trustees can in practice give the company power to control those powers, even though it might be inhibited if the trustees are sufficiently independent in the performance of their duties.

One of the most serious disadvantages to the former owner is that any surplus in the scheme, which is repaid, will be repaid to the company to the advantage of the new owner and not the former owner. The admission of new members can dilute the security for the former owner's benefits, or even reduce them if the scheme is not fully funded. The effective control over the scheme's investment policy could result in property occupied by the company as the bedrock of the former owner's pension planning being reinvested on less advantageous terms. The power to refuse early retirement is self-explanatory.

Therefore, before shares are sold, not only must the owner prepare the company for sale but he should also prepare the pension scheme. The following are some of the preliminary steps that may need to be taken.

1 substitute a new principal employer under the owner's control;

2 remove the principal employer altogether;

3 transfer the owner' interest out of the scheme eg by an annuity purchase or to a personal pension policy;

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4 change the scheme's trust deed and rules to transfer all relevant powers from the company to the trustees, one result of which is that the trustees become a self-perpetuating body;

5 (as an alternative to step 3) provide in the share sale agreement for the buyer of the company to operate the scheme solely on the former owner's instructions and at his expense; and

6 provide in the share sale agreement for any surplus funds returned to the company after tax to be paid to the former owner.

The choice depends on the circumstances and often on the time scale. Steps 1 and 2 can be the simplest if the former owner is retiring, but too often the problem is seen only a short time before completion and so there is no time to take steps 1 to 4, leaving step 5 (obviously with 6) as all that can be done.

Step 5 is usually the cheapest and quickest option (particularly if this is a last minute exercise), but has two disadvantages. One is that the former owner is dependent on the buyer being willing to cooperate in performing his obligations under the sale agreement. The other is that buyers are reluctant to retain any legal responsibility for pension scheme in which they and their employees have no interest, so they can be expected to require indemnities against costs and liabilities and a limit to the time that it remains the scheme's principal employer. Step 5 is therefore available only if there is no time to do anything else or if the scheme is required to be kept in existence for a short period before being wound up following completion of step 3.

The alternative to step 5 is 4, which is preferable in that control is clearly taken away from the company, but it does require more time (and costs more) to study the balance of powers in the existing trust deed and rules and to prepare the necessary deed of amendment.

If the former owner is not retiring, step 1 should be the preferred option, because he retains control of the scheme. If he has another company carrying on a business in which he is employed, that company may be able to become the new principal employer and continue to pay contributions, but it is only if the scheme is closed and not receiving contributions or accruing further benefits that that a non-trading company could be created to become the new principal employer. Step 2 is sufficient if no more contributions are to be paid to the scheme.

The problem is slightly more complicated if the former owner is to continue to work for the company after its sale and have contributions paid into the scheme. In this case steps 4 or 5 (with 6) may be applicable, but with agreement for his continued membership. It can be further complicated if anyone other than the former owner is a member, eg a senior employee who remains with the company. Cases such as this depend very much on the facts so no general principle can be laid down, but in addition to the above steps and variations on them. it will also be necessary to establish, if not already done, how the assets of the scheme and its future income are to be apportioned between the former owner and the other member or members.

Apart from this all normal pensions due diligence will be required.

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