

THE 2012 PENSIONS REVOLUTION

AUTO-ENROLMENT: AUTO-ENROLMENT AND CORPORATE TRANSACTIONS

Pension liabilities in UK corporate transactions are often an issue but generally only where there are defined benefit pension liabilities. The need to comply with auto-enrolment and the various protections associated with it may create practical challenges. With highly prescriptive requirements, it needs to be done right.

SHARES OR ASSETS

As ever, different issues apply according to whether it is a share or asset transaction. The issues to be addressed will also depend on the nature and design of the pension schemes currently in place.

SHARE TRANSACTIONS

A change of ownership need have no impact on a company's pension arrangement. However, a buyer will need to:

- ◆ check that the target has met its auto-enrolment obligations, including record keeping, information provision and monitoring of jobholders;
- ◆ consider whether its participation in the current scheme can be continued post-transaction; this will usually be possible with NEST or a group personal pension plan and is less likely to be an option if the scheme is an occupational pension scheme, particularly if it is a group-wide scheme with other participating employers; and
- ◆ if participation in the scheme cannot be continued, manage the target's exit and discharge of liability from the current scheme and establish alternative arrangements within one month.

There is a prohibition on employers taking any action that will result in a jobholder ceasing to be an active member of a qualifying scheme, unless the jobholder is brought into a new auto-enrolment scheme within one month and with effect from the date they ceased to be covered by the previous scheme.

If the current scheme (or one of them) is a defined benefit pension scheme, all risks commonly arising with such schemes will need to be considered, including funding obligations and Pensions Regulator powers. Careful due diligence may be required. Please visit the "Pensions Regulator" and "Pensions in corporate transaction" pages on our website for more information.

CHECKLIST:

Share transactions

- ◆ Check auto-enrolment compliance
- ◆ Option to continue NEST or personal pension plans
- ◆ Exit or continuation of any occupational pension scheme
- ◆ Replacement arrangement if exiting current scheme

Asset transactions

- ◆ Change in staging date?
- ◆ Comply with auto-enrolment from correct staging date
- ◆ Match existing contributions under group personal pension plan
- ◆ Comply with minimum standards under the Pensions Act 2004 for occupational pension schemes

ASSET TRANSACTIONS

On an asset transaction, employees may be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

TUPE requires maintenance of all employment rights including terms relating to a group personal pension plan but excluding rights to old age, death and disability benefits under an occupational pension scheme.

The auto-enrolment rules, however, apply separately to a succession of employers. In particular, they provide that the staging date of the acquirer will apply from the date of transfer. Auto-enrolment requirements may therefore either accelerate or terminate for affected employees on an asset transfer.

However, if the employees were previously participating in a **group personal pension plan** whether or not pursuant to auto-enrolment arrangements, TUPE will require maintenance of such arrangements and applicable employer contributions post transfer irrespective of the staging date.

In contrast, TUPE does not require replication of pension benefits under **an occupational pension scheme**. Instead, a minimum standard applies under the Pensions Act 2004 for employees previously covered or eligible to join such a scheme: at the least, the new acquirer must **match employee contributions up to 6 per cent of basic salary** in a qualifying defined contribution scheme; there is a defined benefit alternative although this is not the same as the auto-enrolment defined benefit option. Even where auto-enrolment does not apply, this standard must be met. Where auto-enrolment does apply, the acquirer may need to meet both the auto-enrolment contribution requirements and the Pensions Act 2004 minimum standard for those employees who previously participated in an occupational pension scheme. It should be noted that NEST is an occupational pension scheme.

Jobholders who are not employees need only be covered from the acquirer's staging date and only in accordance with auto-enrolment requirements. None of the provisions of TUPE will apply to them.

Comparison of auto-enrolment dates and careful scrutiny of the existing arrangements will be required on an asset transfer to assess the changes that are required or permitted in pension provision.

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