

Getting under the skin of a de-risking deal

Life's odd surprises can throw a spanner in the works, but help is at hand says Allen & Overy's Neil Bowden

De-risking isn't just about pricing, timing and markets. History, preparation and future-proofing are key to securing the right deal. Each de-risking transaction – particularly those that grab headlines for their size, speed or innovation – will keep the advisers at the heart of the deal intensely busy for a month or two, and preparation time is usually a lot longer. Until you've been through a process such as a buy-in, it can be hard to understand the work involved in getting the deal done.

To start with, no two schemes have the same history. Some have roots stretching back through a variety of previous schemes and bulk transfers, with multiple benefit schedules applying to different groups of members.

Ensuring that the schedule of benefits covered by the deal is complete can require an archaeological dig through the scheme's historical documents.

This becomes particularly intensive if the deal is an 'all risks' transfer – the counterparty has to be sure that all those benefit quirks incorporated into the scheme over the decades have been captured (and priced). On top of that, many schemes will have a history of discretionary practices. Member booklets and other communications need to be analysed to arrive at a schedule of agreed practices that records all member entitlements and expectations.

Technical challenges arising from these investigations may affect the deal architecture; it takes close working between insurance and pensions specialists to ensure that all parties can move forward swiftly.

Then there's the core of the deal: the central piece of a buy-in jigsaw, for example, is the bulk purchase annuity policy. Insurance, pensions and banking specialists will be involved in

negotiating the terms of the policy and the deal under which it is purchased.

While that's happening, detailed due diligence will be going on, requiring a range of other legal expertise, from derivatives to data protection.

The larger the deal, the more issues tend to arise – a significant transfer of assets may require a complex web of securities, bonds and swaps to be valued and novated from multiple sources on a tight timetable.

Trustees need to be sure that the provider is good for the long term, to pay out member benefits as they fall due. There are different ways of managing counterparty risk, and trustees need to understand the different solvency, regulatory and compensation regimes involved.

But you should expect the unexpected: for example, last year we advised on a £440m deal covering around 3,000 members of the InterContinental Hotels UK Pension Plan. It was a complex, fast-moving deal, in the middle of which Goldman Sachs announced its intention to sell a majority share in the chosen provider, Rothesay Life.

We helped the trustee to take a pragmatic approach to the original covenant analysis and to respond proportionately to this surprise announcement, so that they could complete the deal in just 19 working days. Having experienced legal advice on hand helped keep the deal on track.

Contingency planning is also important: what could cause the contract to be terminated, and what would the consequences be? What about a future change in control of the provider, a corporate restructuring involving a transfer to another scheme, or insolvency leading to PPF entry?

We cover all foreseeable risks – but again, life can throw up the odd surprise.

For example, the announcement in the Budget on 19 March of 'the most fundamental change to the way people access their pension in almost a century' meant that some midnight oil had to be burned in considering the possible impact for deals that were about to be signed (including one of ours). The Budget changes will be a new factor for consideration in buy-in deals this year – yet another reason why experience in this area is vital.

Senior associate Andy Cork, who also advised on the record-breaking ICI deal (see p28), comments: "Sponsors and trustees often start off thinking about a de-risking project in relatively narrow pensions terms. However, you need more than pensions specialists to achieve a successful and efficient deal.

An experienced legal team which also has the full range of expertise on insurance, banking, derivatives and data protection law and market practice can cover all aspects of the deal seamlessly, so you can be pragmatic when needed and focus on your central commercial aims."

Allen & Overy's Pension Risk Group brings together experts across the full range of specialisms to deliver the right results for our clients and to cut down duplication, delay and costs.

You'll find a range of briefings on our specialist de-risking website, www.allenoverly.com/pensionrisk, where you can also watch a video telling the inside story of the journey to buy-in/buyout from a trustee perspective.

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