

ALLEN & OVERY

PENSION RISK – PROVIDING SOLUTIONS

Funding issues – contingent asset structures

Our Pension Risk group has completed several high-profile contingent asset structures, acting both for sponsoring employers and trustees.

What is a contingent asset structure?

A contingent asset structure provides a source of income to the pension scheme, distinct from annual cash payments direct from the sponsoring employer. These structures have various other names, including pension funding partnerships, but they are fundamentally very similar.

Essentially the structure involves placing certain group assets (such as property or brands) under a new limited partnership, established by both the sponsoring employer and the pension scheme. The assets are typically then leased back to the employer's group, which provides an income stream to the partnership and (in turn) the pension scheme.

Why use a contingent asset structure?

Contingent asset structures have a range of advantages for both the sponsoring employer and the pension scheme. For the pension scheme, the assets in the structure provide security for the income stream, including on the insolvency of the sponsoring employer.

For the sponsoring employer, the structure allows deficit payments to be spread over a much longer period of time (due to that security), which reduces annual contributions to the pension scheme. However, the employer retains full control over the assets that are placed into the structure and those assets revert to it at the end of the structure's term. In addition, the structure can ensure that the scheme is not left with surplus funding and, subject to tax structuring, can provide a tax-efficient use of assets.

CONTACTS



Dăna Burstow

Partner
Pensions
Tel +44 20 3088 3644
dana.burstow@allenovery.com



Matthew Appleton

Associate
Corporate
Tel +44 20 3088 3340
matthewappleton@allenovery.com

“Its cross-disciplinary approach provides clients with an impressively broad service, allowing them access to banking, restructuring, derivatives and regulatory and corporate expertise.”

Chambers UK 2010, Pensions

For both the sponsoring employer and the pension scheme, the structure also results in an immediate reduction in the pension scheme's deficit and an improvement in its funding level, including a potential reduction in its Pension Protection Fund levy.

Our specialist experience

The essential basis of each contingent asset structure is typically the same. However, there are a number of variables (such as whether or not the structure makes a final bullet payment to the pension scheme) which can affect the approach to negotiation and establishment of the structure.

With experience acting for sponsoring employers and trustees, our Pension Risk group has the capability to steer parties through the key issues quickly. Our integrated team delivers a seamless service, covering all legal aspects of the deal, from corporate structuring to pensions investment restrictions and insolvency advice. We have a strong track record of working well with other advisers on these structures, particularly accountants and tax advisers. We are conscious of the concerns of both parties and use this knowledge to help establish mutually beneficial structures with the maximum ease.

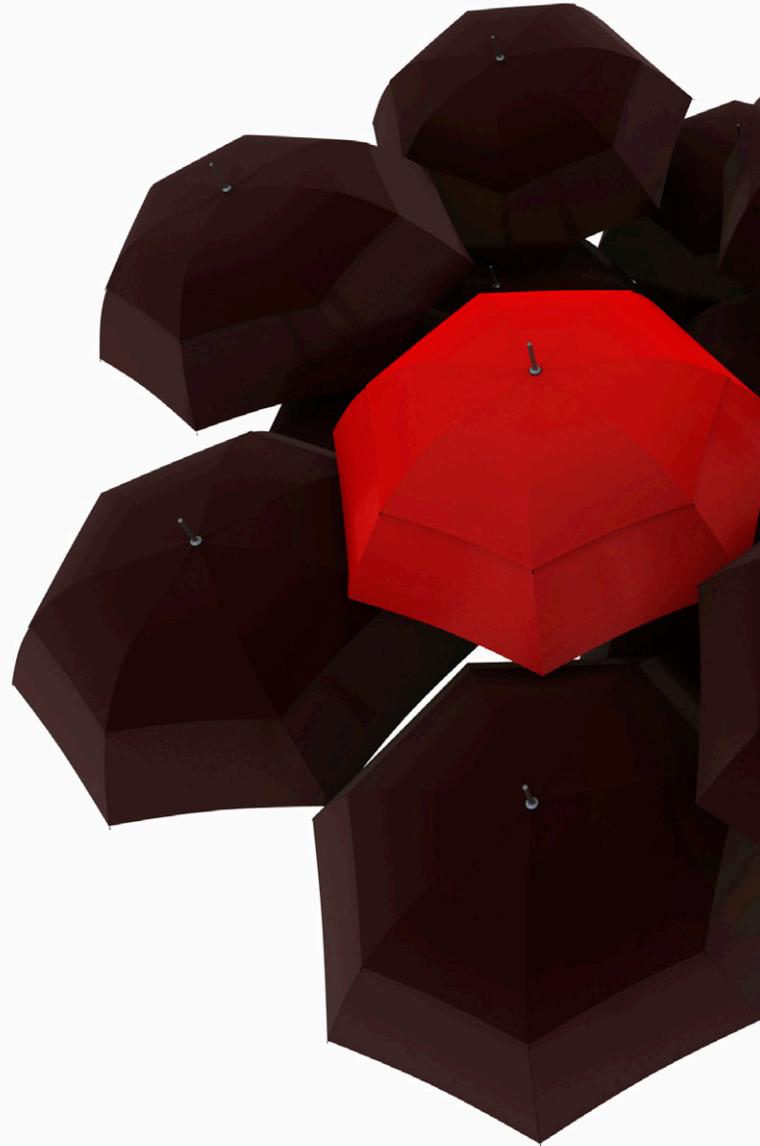
Recent deals

Our Pension Risk group has advised:

- the trustee of the Britvic Pension Plan on its pension funding partnership in respect of both real estate and intangible brand assets. The structure involved both regular payments to the pension plan during its term, as well as a final bullet payment capped at the lesser of the outstanding deficit and a fixed sum.

We are presently advising a number of other sponsoring employers and trustees on pipeline transactions including:

- the trustees of a pension scheme in the financial sector on a special purpose vehicle holding £2billion in collateral to support an extended recovery plan
- a blue chip employer in the energy sector on a partnership structure holding operating assets leased back to the sponsor providing an income stream to the trustees as well as collateral to support covenant.



“Allen & Overy LLP’s pensions team advises on cutting edge contingent asset and funding work and has a growing longevity swap practice.”

Legal 500 2012