Finding the pensions solution

The issue of pensions is often a thorny one in many restructurings. Chris Martin and Martine Trouard-Riolle explain how thinking 'outside the box' can provide interesting alternatives.

There have been a number of innovative restructurings in the last six months, which show that even in the most difficult of circumstances, and with potential insolvency on the horizon, a more optimal solution can be found with willing participants, some creative thinking and a lot of hard work. Uniq and HMV are two such cases where we have helped to find a solution.

Uniq

As a result of various corporate sales in the 1980s Unigate plc had become Uniq, a company with a market cap of about £6 million. However, it found itself in the unenviable position of supporting £1 billion of pension fund liabilities with a deficit estimated to be in the region of £400 million. As the scale of the problem dawned on shareholders, suppliers and customers, the position of Uniq became more precarious. The big challenge for management and the trustee was how to construct a solution that allowed the company to gain strength and increase its earnings. There was no point in the trustee squeezing whatever cash it could out of the business in the short term. That would have just led to a strangled three- to five-year death for the company. The solution involved a pension deficit for equity swap with the pension fund owning Uniq. The trustee agreed to forgo all future claims against its former parent in return for a 90.2 per cent equity stake in the company. Once the company was free from the pension burden it was much easier to find a buyer.

The deal was accepted by virtually all shareholders and it is hoped that it will result in the scheme being funded to a level which, while not providing full benefits to members, will mean that it provides a higher level of benefits than the Pension Protection Fund. The minority shareholders will also receive about £10 million, which is considerably more than they would have got on insolvency.

HMV

Discussions between the pension scheme and HMV over poor trading results and a falling share price formed the backdrop to ITS being appointed to supplement the skills of the existing trustee board of the HMV pension scheme. Two of the trustee directors had to step back due to potential conflicts of interest. In this case the proposal was a sale of the company's book store subsidiary, Waterstone's. All parties – the banks, the company and the scheme – had strong cards to play. In order for the deal to complete the trustee had to agree to an apportionment of the pension liabilities so as to leave Waterstone's free of all pension debt. In doing this the trustee had a legal requirement to be reasonably satisfied that the remaining group could support the liability.

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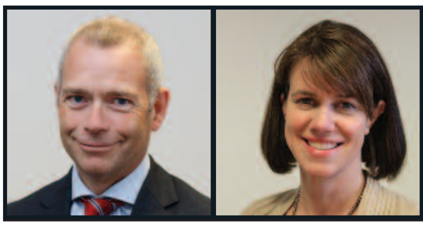
The trustee was able to secure a package of support from the company (with the agreement of its lenders) that will help the trustee meet its objective for funding the scheme over the longer term. The £60 million package comprises cash contributions over a ten-year period, security and an initial contribution from the sale proceeds of Waterstone's. This package was significantly better than the first offer put forward to the trustee. Recognition by each of the three major stakeholders – lender, company and trustee – of the others' position allowed a successful solution for all three to be reached.

Although the Uniq and HMV deals were very different in terms of problems and solution, there were a number of key similarities. In each case:

- The problem was identified at an early stage and the pension scheme trustees were brought in to the discussion before thinking was fixed.
- At the same time an independent trustee with transactional/restructuring experience was appointed.
- All parties were willing to think 'outside of the box' and consider all options.
- The Pensions Regulator was kept up to date and informed as the negotiations progressed. (The way the team at the Pensions Regulator behaved was really important in terms of achieving the final outcome.)
- Through dialogue and negotiation each stakeholder had a clear view of where the other parties were coming from. Discussions were always frank and at times uncomfortable. There was no cosy co-existence but there was respect on all sides and the determination to find the best possible solution for all in trying circumstances.



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