

# ST. JOHN'S COLLOQUIUM

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# **2016 IAA & IPEBLA Joint Colloquium St Johns Newfoundland**

## **Pensions Aspects of Cross-Border M&A**

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# Introduction

- Relevant laws in each of Belgium, Ireland, Canada
- Types of pension plans and regulation
- M&A transactions
  - share sale
  - asset sale
  - combination of both



# Pre-Contract – Due Diligence

- May depend on transaction structure
- Identify pensions – type – defined benefit / defined contribution / hybrid
- Onerous provisions in plan documents (eg, termination, amendment)
- Pension liabilities – funding issues – implications for transaction price
- Can purchaser exclude liabilities?
- Dealing with deficits
- Identify requirement for third-party\* consent, eg:
  - Pension Regulator
  - Revenue Authority
  - Trustees

(\* ie, party other than vendor or purchaser)

## Pre-Contract – Due Diligence

- Data privacy issues (are there any?)
- Relevant documentation
- Transfer of Undertakings Regulations (TUPE) issues
  - law applies in all EU jurisdictions
  - do benefits have to transfer?
  - what form must benefits take?
  - are pensions excluded (some EU jurisdictions)?

## Contractual Issues

- Depends on transaction structure
- Cross-border transactions may allow different acquisition structures (share sale / asset sale) in different jurisdictions
- Sale agreement will provide for vendor and purchaser obligations regarding pensions
- Warranties (and indemnities?)
- Disclosure letter

## Contractual Issues

- Pension schedule (used for transfer of pension plan assets / liabilities)
  - Is transfer mandatory?
  - Is a transitional period necessary / possible?
  - Are third party consents required?
- EU Cross-Border Plans
  - EU law permits single plan – multiple jurisdictions.
  - Vendor group may be in multiple EU jurisdictions but have one plan.

## Post-Acquisition Issues

- Consolidation / reconstruction of pension arrangements
- Requirement for third party consents
  - Trustees
  - Unions
  - Members
  - Pension Regulator / Revenue Authority
- Industrial relations issues, eg:
  - Employees with different pension benefits
  - Collective agreements with unions



## M&A Transactions – Other Benefit Issues

- Life assurance
- Retiree health and welfare benefits

# Questions?

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