The Pension Agreement and Mergers & Acquisitions

Increase your knowledge on pensions in transactions

Besides salary, the pension plan is often one of the most material and expensive employment conditions and it is precisely these pension plans that will be subject to structural changes on both employers and employees as a result of the Pension Agreement. In this article we discuss how to take this account in a proposed merger or acquisition.

In times of a merger or acquisition it is crucial for employers to take the position of employees and their benefits into consideration, both from the perspective of the employee as well as the impact the employee benefits may have on the business valuation. Besides salary, pension is in many cases the second most costly benefit from an employer perspective. Especially on this topic, employers and employees will face structural changes in the upcoming years. Recently, our colleague Richard van Marwijk published an article about the most recent decisions of the Future Pension Act and the implications for employers. Of course, the implications depend on which pension plans are applicable at the company and whether the company has already made efforts relating to the introduction of the new legislation. Based on two common situations, this article discusses how the new legislation can be considered from a transaction perspective.

Company has a defined contribution plan or insured average pay plan

Based on the Future Pension Act all pension plans will be based on defined contribution. All new pensions will be based on a flat rate premium. Therefore, when the company has a defined contribution plan or average pay plan, a choice should be made whether the company will apply the transitional arrangements (in Dutch: overgangsrecht). Consequently, the introduction of the flat rate in the Future Pension Act has impact on either both the current and future population or solely on the future population.

- In case only the future population will participate in the new pension plan, the current pension plan for existing employees is continued and only future employees will transition to a new pension plan with a flat rate contribution. This results in different pension plans and different employee benefits among employee groups with similar characteristics.

- In case the current population transitions to a new pension with a flat rate contribution, this results in a significant change in employee benefits for all employees. This in turn may have implications for the level of pension premiums and (temporary) compensation measures.

The future pension premium developments and compensation measures are directly related to the characteristics of the pension plan and current company employee benefit policy. It is important to have knowledge of those during a due diligence phase in order to identify possible impact on the business valuation and post-merger integration phase. Based on a limited amount of data and the use of dashboarding it is possible to obtain valuable insights.

Presented on the top of the next page is an example of how the pension costs may develop in the coming years. Depending on the premium setting, structure of the participant base and possible decisions of the employer, there is a realistic chance that the company will be confronted with higher pension costs and/or compensation measures may be necessary, which impacts future cashflows. Such an analysis is therefore not only relevant for the ‘own’ employee base, but also relevant during a due diligence process.

Company is affiliated with an (industry-wide) pension fund

For companies with pension plans that are administered by company- or industry wide pension funds, structural changes of the of the pension plans will be required. Social partners, in consultation with the fund, must choose between two different types of plans, where the risk shifts further to the participant and funding ratios no longer exist.
While a company usually has a say among social partners and therefore also with the pension fund, in general there is a limited direct influence on the decisionmaking process with regard to the Future Pension Act. We do observe at collective labor agreement negotiations that discussions are ongoing on what changes will be implemented under the new legislation, for example by means of premium agreements for the future. Sufficient knowledge of the developments in the context of the Future Pension Act and the collective labor agreement can therefore contribute to a successful mergers, acquisitions or integrations.

Let’s get to work
Many organizations state that they did not make any decision with regard to the Future Pension Act yet. However, this does not mean that no information is available and the impact does not have to be considered in the business valuation and integrations plans. In particular with regard to the defined contribution plans and average pay plans, several decisions have to be made by companies which may have a big impact on the pension costs, possible compensation measures and employee benefits. For employers who are mandatory affiliated with pension funds, the role of the individual company is often more limited but the consequences for the employer and employee can nevertheless be significant. Are you involved in a merger or acquisition and did not already discuss the implications of the Future Pension Act? Discuss the subject during a transaction to increase pension insights!

- The green diagram provides a forecast of annual pension flat-rate premiums. In blue different possibilities of compensation measures are presented. Outcomes depend on the choices made by company.
- The impact on employees is different per age cohort (below-left side). Insights can be provided on individual level.

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