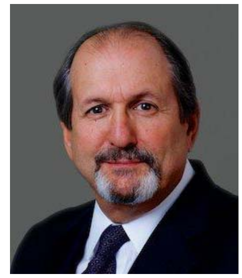
Members Quarterly Spring 2014 Edition

Feature

Pension and Retirement Funds Impact Mergers and Acquisitions

HR's role in the due diligence process



Philip H. Gennis
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One area that has a major impact on any merger or acquisition activity is in the risks and liabilities associated with company pension plans and retirement funds. According to Philip Gennis, commercial insolvency & restructuring specialist with msi Spergel Inc., pension liabilities for all companies in all sectors can be as much as 200% of the value of the company. That's a lot of money. It's also why organizations considering a merger or acquisition should look very carefully at all existing retirement and pension plans before any deal is finalized.

Ensuring that all facts and factors in both organizations are considered when it comes to such issues is not only the role of the financial and legal experts. Human Resources can and should play an important part in conducting due diligence in this area. All existing and projected retirement benefits and costs need to be examined closely and there cannot be any skeletons left hidden in the closet. This review should consider administrative, legal and financial aspects of these plans and any side deals or special payment arrangements should be disclosed to both parties.

On the legal side of the ledger, there are requirements that have to be met under the -appropriate pension legislation which is usually under provincial jurisdiction unless the merger partners are in federally regulated industries like banking or transportation. There are provisions and regulations for transferring of pension assets and liabilities and governing the wind-up of either of the plans in the case they are being combined within the new entity.

"Special consideration should also be given to dealing with any excess or surplus funds coming out of these proposed changes," says Philip Gennis. He notes that there are several recent court rulings on this matter that should be considered before making any assumption that the newly merged organization can utilize any of these monies for anything but pension or retirement related purposes. The pension actuarial firm should also be asked for their advice before making any changes to existing pension plans as they too should be fully updated on all pension plan legislation.

The actuaries for any existing pension plan should also be asked for their financial advice about the overall health of any existing plans and whether they are funded adequately to meet current and future obligations. If there is going to be a merger or combination of the plans within the new company, they can also provide their projections on how much money is required to be set aside to cover existing claims against the plans.

HR should also be asked to provide information and documents on any of the side deals that the companies may have negotiated with their employees, in particular additional payments upon retirement or resignation to their senior executives. Philip Gennis says that "these types of arrangements are de rigueur these days and sometimes only HR will know all of the details of these special payments. These special arrangements may involve millions of dollars in liabilities about which only the corporate executives and HR staff will have knowledge."

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Another very important role that HR should play in retirement issues when it comes to mergers and acquisitions is to ensure that the general proper administration of all benefit and compensation plans continues throughout the M & A process. This should include communicating to all employees about possible changes and the impact of their retirement and pension planning processes. You don't want an employee revolt over changes to a pension plan to cause even more turbulence through what is already a difficult period.

Pensions and retirement funds can be major cause for concern in M & A actions but only if you don't have full disclosure and a complete due diligence process. Philip Gennis feels that this is one area where due diligence is worth every penny and every hour you spend. "If you don't look after this properly, you may find that you are building your new corporate house on a very unstable foundation."

Members Quarterly
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