

# WORKSHOP 14 MANAGING PENSION FUND TRUSTEES OF THE TARGET COMPANY ON A PUBLIC M&A TRANSACTION/POST-TAKEOVER LEVERAGE OF REFINANCING BY THE BIDDING COMPANY

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# The ABC Group and its defined benefit pension plans

1. ABC S.A. is a Swiss company whose shares have their primary listing on the London Stock Exchange.
2. ABC S.A. has, in addition to its activities in Switzerland, 3 main operating companies:
  - ABC (Canada) Limited, which carries on research and manufacturing operations in Canada,
  - ABC (UK) Limited, which carries on research and manufacturing operations in England, and
  - ABC (USA) Inc. which carries on research and manufacturing operations in the USA.

# Main defined benefit pension arrangements for the ABC Group

	<u>Name of sponsoring employer</u>	<u>Jurisdiction and establishment of pension plan</u>	<u>Name of pension plan and its trustee/ plan fiduciary</u>
1.	ABC (Canada) Limited	Ontario, Canada	1.1 The ABC (Canada) Defined Benefit Pension Plan 1.2 ABC (Canada) Limited
2.	ABC (UK) Limited	England	2.1 The ABC (UK) Defined Benefit Pension Plan 2.2 ABC (UK) Pension Trustee Limited  <b>Note:</b> At least one third of the board of directors of this company must be member nominated to comply with Section 242 of the UK Pensions Act 2004.
3.	ABC (USA) Inc.	New York, USA  US Federal Laws (ERISA and the Internal Revenue Code) control	3.1 The ABC (USA) Defined Benefit Pension Plan 3.2 Trustee: MG Trust Company 3.3 ABC (USA) Inc. is designated as Plan administrator and ABC DB Plan Committee is designated as “named fiduciary” for Plan investment purposes and discretionary administrative purposes

# Funding position of the three plans

	<u>Name of Pension Plan</u>	<u>Funding status as at 31st December, 2016 on an International Accounting Standard 19 Basis in the ABC Group Accounts</u>	<u>Funding level on local law statutory funding basis</u>	<u>Funding basis in terms of securing plan benefits with an insurance company</u>
1.	The ABC (Canada) Defined Benefit Pension Plan	<p>1.1 Assets: <b>C\$800m</b>                      1.2 Liabilities: <b>C\$1,000m</b></p> <hr/> <p>1.3 Deficit <b>C\$200m</b></p> <hr/> <p>1.4 Funding ratio: 80% funded</p>	<p>1.1 Assets: <b>C\$800m</b>                      1.2 Must fund at greater of going concern liability (GC) and solvency liability (SL):                      GC=<b>C\$795m</b>                      SL = <b>C\$1,000m</b></p> <hr/> <p>1.3 Deficit:                      GC = (<b>C\$5m</b>)                      SL= <b>C\$200</b></p> <hr/> <p>1.4 Funding ratio:                      GC= surplus                      SL= 80% funded</p>	<p>1.1 Assets: <b>C\$800m</b>                      1.2 Liabilities: <b>C\$1,100m</b></p> <p>(No requirement to report on this basis.)</p> <hr/> <p>1.3 Deficit <b>C\$300m</b></p> <hr/> <p>1.4 Funding ratio: 73% funded</p>

# Funding position of the three plans (cont'd)

2.	The ABC (UK) Defined Benefit Pension Plan	2.1 Assets: £800m 2.2 Liabilities: £1,000m <hr/> 2.3 Deficit £200m <hr/> 2.4 Funding ratio: 80% funded	2.1 Assets: £800m 2.2 Liabilities: £1,200m <hr/> 2.3 Deficit £400m <hr/> 2.4 Funding ratio: 67% funded Note: “Technical provisions” basis under Part 3 of Pensions Act 2004	2.1 Assets: £800m 2.2 Liabilities: £1,600m <hr/> 2.3 Deficit £800m <hr/> 2.4 Funding ratio: 50% funded Note: Cost of buying out liabilities with insurance company
3.	The ABC (USA) Defined Benefit Pension Plan	3.1 Assets: <b>US\$800m</b> 3.2 Liabilities: <b>US\$1,000m</b> <hr/> 3.3 Deficit <b>US\$200m</b> <hr/> 1.4 Funding ratio: 80% funded	3.1 Assets: <b>US\$1,000m</b> 3.2 Liabilities: <b>US\$1,400m</b> <hr/> 3.3 Deficit <b>US\$400m</b> <hr/> 1.4 Funding ratio: 71.4% funded	3.1 Assets: <b>US\$1,000m</b> 3.2 Liabilities: <b>US\$1,600m</b> <hr/> 3.3 Deficit <b>US\$600m</b> <hr/> 1.4 Funding ratio: 62.5% funded (on Plan termination basis)

# XYZ BidCo Plc

1. XYZ BidCo Plc (“**BidCo**”) is a newly incorporated company backed by a number of private equity investment funds.
2. BidCo has just announced a takeover bid for ABC S.A.
3. The offer price for the shares will be cash and will be financed as follows:
  - 40% by cash to be invested in BidCo by the private equity funds, and
  - 60% by acquisition finance provided by a consortium of banks with the lead bank being JKL Bank.
4. The acquisition finance facility, once drawn, will have to be repaid one year after it has been drawn.

# XYZ BidCo Plc (cont'd)

5. However, JKL Bank has provided indicative terms on which replacement long term finance will be put in place.
6. Under those indicative terms:
  - 6.1 ABC S.A. will be required to guarantee repayment of the long-term financing and provide security over its assets.
  - 6.2 its 3 main operating companies, ABC (Canada) Limited, ABC (UK) Limited and ABC (USA) Inc. would be required to guarantee the repayment of the long-term financing and provide security over their assets in respect of repayment of the post-acquisition refinancing (unless prohibited by local law – e.g. corporate benefit or financial assistance).

# Takeover bid just announced

1. The following actions/risks need to be managed in each jurisdiction by BidCo:
  - 1.1 Actions taken by the sponsoring employer in relation to the pension plan in question in the jurisdiction in question.
  - 1.2 Actions taken by the Pensions Regulator or Benefit Guarantee Corporation in the jurisdiction of the pension plan in question.
  - 1.3 Actions taken by the Trustee/Plan fiduciary in relation to the pension plan in the jurisdiction in question.
  - 1.4 Actions taken by pensioner action groups/recognised trade unions in the jurisdiction in question in relation to the pension plan in question.
2. In addition BidCo is in the process of negotiating the post-acquisition long term refinancing with its lending banks to include in the terms of that long term refinancing certain undertakings, representations and events of default relating to the ABC Group's 3 defined benefit pension plans.



# Funding basis

	<u>Jurisdiction</u>	<u>Typical funding/ valuation/ liability calculation basis</u>
1.	Canada	1.1 Accounting 1.2 Going concern 1.3 Solvency Discontinuance/wind-up/buy-out
2.	England	2.1 Accounting 2.2 Ongoing funding 2.3 Discontinuance/wind-up/buy-out
3.	USA	3.1 Accounting 3.2 Ongoing funding 3.3 The Pension Benefit Guaranty Corporation termination basis

# Powers of DB pension plan fiduciary/trustees

	<u>Power</u>	<u>Position in Canada</u>	<u>Position in the UK</u>	<u>Position in the USA</u>
1.	Accelerate Funding			
2.	Change investment strategy			
3.	Seek to persuade relevant regulatory authority to intervene			
4.	Change of control clauses in the trust deed or plan document			
5.	Wind-up pension plan			

# Powers of regulators

	<u>Powers of Regulator</u>	<u>Canada</u>	<u>UK</u>	<u>USA</u>
1.	Power to require payments to be made to the pension plan			
2.	Power to require other group companies or connected persons to provide guarantees or financial support in respect of the employer to pay contributions to pension plan			
3.	Power to wind-up the pension plan			

# Impact of trade unions/member action groups

	<u>Powers</u>	<u>Position in Canada</u>	<u>Position in UK</u>	<u>Position in USA</u>
1.	Specific rights under collective bargaining agreements as to funding (or as has otherwise been agreed in previous negotiations with recognised trade unions)			
2.	Likelihood of taking industrial action			
3.	Likelihood of mounting publicity campaign which may cause reputational damage to products/services			

# Practical management of the situation

- Canada
- UK
- USA

QUESTIONS?