How Printpack UK was rescued – by its pension fund

When Printpack, one of the world's biggest packaging makers with clients like Pepsi and Nestle, realised its UK subsidiary had an unsustainable US$50 million pensions deficit which left untreated would make the subsidiary insolvent, it came up with a highly unusual solution.

Printpack used the final salary pension scheme of the UK side to provide a majority equity stake for a restructuring in which the subsidiary was bought out by its management team, who in turn received minority stakes.

This is the first time a pension scheme has taken over a solvent sponsor, although the Uniq and Kodak schemes in the UK have come to similar agreements with insolvent businesses.

The deal saved all 330 jobs at the two UK sites at Bury and Saffron Walden. The transaction was driven both by the UK pension fund trustees as well as the management, and the UK pensions regulator (TPR) advised that the finally agreed deal did not need its clearance, as it was not materially detrimental to the scheme.

No, this isn't what Robert Maxwell did

Some readers of Global Turnaround may be reading about a company using its own pension fund to prop up its equity as being exactly the kind of financial sleight-of-hand that the late fraudster Robert Maxwell got up to before his publishing empire collapsed in 1991.

In fact, the Printpack deal satisfies precisely the UK legislation that was put in place following the Maxwell scandal to safeguard pension funds from rapacious company owners.

The Pensions Act 1995 says that not more than five per cent of a pension fund's assets can be invested in its sponsoring company. Charmian Johnson, the pensions partner from Squire Patton Boggs that advised the UK side of Printpack, points out that the pension fund easily complied with this five per cent rule since its equity was effectively worthless at the time of the restructuring.

"As the market value of the UK company recovers, so the pension scheme will reduce its holding to remain in line with the five per cent rule," says Johnson.

If all this sounds too good to be true, it has to be stressed that Printpack is an extremely unusual transaction.

But Susan Kelly, the restructuring partner with Squires Patton Boggs in the UK who helped design the deal, says it could become commonplace:

"Printpack could form the blueprint for other restructurings where the pension scheme holds sufficient assets.

> "Now that the global economy has recovered relative to a few years ago, many US corporates will be looking at dealing with their under-performing European subsidiaries. They now have a good way of achieving this."

The deal also enabled the US parent to avoid the reputational damage of a 'Chapter 11 at the UK subsidiary.' Instead, clients like Pepsi and Nestle were entirely unaffected by the restructuring, under which the UK side continued to work seamlessly with the former US parent.

This was achieved despite the fact that the UK subsidiary had to find some US$5 million per year to plug the hole in the pension scheme. The solution was for the UK scheme, the Enterprises' Pension Scheme, with 718 members and UK£54 million in assets, to acquire the majority shareholding in a newco, Pulse Flexible Packaging.

Before the restructuring the group had 28 manufacturing plants in the United States, Mexico, the United Kingdom, Poland and China. Now the operations in the UK and Poland are independent.

How the deal worked

The estimated pension deficit of US$50 million in Enterprises had become too large for either Enterprises or its parent to properly support.

The management of Enterprises formed a newco, Pulse Flexible Packaging Limited, which acquired the business and assets for Enterprises and therefore, the pension fund deficit.

The next, uncompleted stage is for the newco to cram down the deficit, which will require the agreement of all members. Meanwhile for the US and UK operations it is 'business as usual'.

Vince Phillips, an experienced senior corporate executive, was appointed chief restructuring officer (CRO) by Enterprises' management team to guide strategy and deliver the transaction.

The significance of the deal

Kelly commented: "This is a great example of stakeholders, trustees, financiers, regulators and restructuring professionals working together on all sides of the table to deliver the best result for themselves, the business and, ultimately, the employees."

Charmian Johnson, pensions partner at Squire Patton Boggs said:

"The Printpack deal is notable because these transactions are generally still quite rare and also because this specific deal illustrates a further sea change in the approach of both the UK Pension Regulator (TPR) and the Pension Protection Fund (PPF) which is now more in line with commercial banking solutions."

"We focussed on finding a way for the Scheme to avoid falling into the PPF, and to save the employer from entering insolvency, by the use of imaginative and highly structured solutions," said Johnson.

She added: "Printpack's advisers and the pension fund trustees considered various solutions, including changes to the scheme's benefit structure by establishing a new pension scheme, as well as the pension scheme becoming a part-owner of the new business."

Kelly added that the pension scheme already had a seat at the table at the beginning of the restructuring talks since it held a floating charge security over the company's assets. "This was important in giving the pension scheme a voice," said Kelly.

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Printpack Firms & Faces


Susan Kelly, Squire Patton Boggs


Charmian Johnson, Squire Patton Boggs

The UK management buyout vehicle

Susan Kelly, head of restructuring and insolvency for Squire Patton Boggs in the UK and Europe, led a team of restructuring, pensions, real estate, labour and tax lawyers acting for Enterprises, the management's buyout vehicle. This included pensions partner **Charmian Johnson**.

Vince Phillips, an experienced senior corporate executive, was appointed chief restructuring officer (CRO) by Enterprises' management team to guide strategy and deliver the transaction.

The pension trustees

David Costley-Wood at KPMG advised the pension trustees on the novel restructuring. Last year Costley-Wood was appointed as a joint administrator in two high profile cases in the UK, that of high street retailer JJB Sports and Salford Student Homes.

The trustees were represented by Eversheds, led by **Elenor Lovering**.

Who will restructure Europe's hi yield issuers? New York or London?

The theory goes like this: European corporates have spent the last couple of years refinancing their way out of distress courtesy of the hi yield bond markets. Any boom is usually followed a few years later by a series of restructurings.

These hi yield bond deals use New York law documents. Some lawyers are therefore suggesting that these bonds will need to be restructured through a US mechanism, most probably Chapter 11. Therefore New York will enjoy a boom in Chapter 11s of Europe corporates, starting in a year or so's time.

> Until now the choice of restructuring forum for many European corporates has been London, using the ultra-flexible English Law Scheme of Arrangement.

This Schemes workflow for London-based advisers stands in jeopardy, so the theory goes, as the next restructuring boom relies on New York law documentation. Cross-border restructuring work is set to flow westward across the Atlantic, to London's loss.

But hang on a minute. Even the Americans admit that Chapter 11 has become far too expensive a process. This cost helps explain the historically low levels of Chapters 11s in the US for the last three years, a trend that shows little sign of changing. Why would European corporates find Chapter 11s any more attractive than their US counterparts?

One answer is that the few Chapter 11s of large corporates that do still happen in the US now tend to be far shorter affairs. The time of airlines staying in Chapter 11 limbo for years on end seems to be over, for now at least. Pre-negotiated 'pre-Packs' have become the norm.

> The problem is, even in their pre-packaged state, Chapter 11s are still very considerably slower and more expensive than their UK rival, the Scheme.

There is more. The English courts have been so flexible in their interpretation of the scheme that you don't even need to show 'sufficient connection' to the UK to gain recognition, or even use English law documents. The recent Scheme used by Magyar Telecom involved a New York loan note that was compromised by a UK Scheme of arrangement. The London court recognised the scheme in the US using the Chapter 15 procedure.

Then there is another recent Scheme, that of Apcoa, where a big German corporate changed the law covering its debt documentation from, German to English, in order to use a Scheme in the UK.

If these recent cases are anything to go by, there doesn't seem to be anything stopping European corporates using the English law Scheme to compromise their hi yield bond debt when these fall due in the next few years. They can even get the deal ratified in the US using Chapter 15 recognition. Again, quicker and cheaper than Chapter 11.

> So, is London safe from this threat of hi yield restructurings floating off to New York?

Not completely. For one very good reason; everyone likes familiarity. When lenders are agreeing to have their loans compromised, they want to be confident that the process is reliable, predictable and preferably something they have used before. For many US-based banks, hedge funds and private equity houses, a New York-based restructuring executed by their tried and trusted US-based advisers may be preferable to a London-based deal, however cheap or flexible it may appear.

The irony is that New York and London are really flip sides of the same coin; they are dominated by the same US bulge bracket investment banks.

Goldman Sachs, JP Morgan and Morgan Stanley loom over the Thames just as impressively as the Hudson.

The UK may have its Magic Circle law firms to lead large-scale cross-border restructurings. But any US law firm pretending to be a serious player in cross-border restructurings has to have a credible operation in London these days. Indeed, most French or German professionals tend to see US and UK advisers and lawyers through the same lens; as English-speaking Anglo Saxons, operating under Common Law in a casino economy.

So who will win? My feeling is that the London cross-border restructuring system is so well established and manned that it will be a difficult incumbent to derail completely. On the other hand, the familiarity argument may sway some US stakeholders to use New York and Chapter 11. Let battle commence.