HR, incentives and retention issues in Merger & Acquisition transactions

This article is an extract from GTDT Private M&A 2022. Click here for the full guide.

In this chapter, we consider some of the key HR, incentives and retention issues from an acquiring company’s perspective, pre- and post-completion of a transaction.

The aim is to provide some high-level comments on these issues and to highlight the importance of commencing the due diligence process as early as possible.

We will cover the following issues:

- why companies implement share plans;
- international remote workers;
- advance planning and due diligence;
- key HR issues to consider;
- communication with share plan participants;
- vesting and settlement of share plan awards (awards);
- managing the tax liabilities when awards vest or are exercised;
- key share plan issues that arise on transactions;
- retention and transaction bonuses;
- general comments on awards; and
- comparing awards granted post-trade sale versus post-private equity sale.

Why companies implement share plans

Most listed and unlisted companies have cash and share-based incentive arrangements in place in order to lock-in and incentivise their employees. If the incentive arrangements are correctly structured, they should give the company a competitive advantage.

The type of incentive arrangements a company has in place will often depend upon the company’s stage of development, its size and commercial value, its strategy for growth and the possible exit strategy for shareholders.

International remote workers

The covid-19 pandemic has caused a shift in working behaviour and global mobility, which has ultimately been seen across all sectors of the global economy. Sudden border closures and quarantine requirements led to a displacement of workers across the globe on a scale never seen before, and employers suddenly had little influence over the location of their employees.

It initially seemed that this would be a temporary consequence of the pandemic that would be short-lived enough that the resulting compliance risks would be minimal. With a vast network of double taxation agreements reducing the risk of double taxation, and certain European countries quickly introducing concessions for income tax and social security purposes, the early indications were that there should be no significant challenge from short-lived international remote working arrangements. However, more than a year on, many employees continue to work remotely, either through choice, health and well-being reasons or owing to sustained border closures.

Prolonged periods working overseas will invariably trigger overseas tax liability for international remote workers. International remote workers are more likely to hold substantial cash and share-based incentives and are, therefore, far more exposed to unexpected and substantial tax and social security liabilities. This is especially the case if employees are based overseas at the time of a corporate transaction.

Generally, income tax liabilities will be apportioned over the time the participant is based in any particular jurisdiction from the date of grant to the date the award vests (or is exercised, in certain jurisdiction such as the United States). Social security liabilities are more complicated.

Employers are, therefore, working to determine the potential risks to their business created by long periods of international remote working arrangements and some are also now clarifying the individual implications for their employees.

The key tax issues that employers will need to consider are as follows.

- Income tax and social security: will the proposed arrangements create an overseas income tax or social liability, or can these be mitigated through the numerous double taxation treaties or social security agreements? Will employers agree to become liable to a potentially costly overseas employer social security charge?
- Permanent establishment: is there a risk of a creation of an overseas permanent establishment and corporate tax exposure in a foreign jurisdiction?
- Payroll and compliance costs: overseas corporate registrations and operation of a foreign payroll can be extremely costly and administratively burdensome. Some remote working arrangements may result in dual withholding, so an employer may consider offering a loan to the employee to assist with cash flow issues.
- Immigration: do the employees have the right to work in the host country?
- Other issues:
    - Does the employee have overseas health insurance, and who would be responsible in the event of overseas costs?
    - Is the employee performing restricted activities that have to be performed within a specific jurisdiction?
    - Are professional qualifications recognised in the overseas jurisdiction?
    - Can the employee continue to contribute to the local pension scheme or share plan?
    - What are the data transfer rules in the overseas country?
    - How will the employee’s work be supervised, and how would any underperformance issues be addressed?

Early indications are that the pandemic has caused a permanent shift within global mobility and attitudes towards remote working. Many employers have suggested that remote working is here to stay, whether through a hybrid model of office and home-based work, or via permanent office closures creating 100 per cent working from home arrangements.

Trends within global mobility and remote working are also quickly changing. Employees who have found themselves working from home for the past year have fast become empowered and found a greater voice to dictate their preferred working patterns. Employers are quickly quantifying the benefits of a more permanent remote working approach, with potential cost reductions and productivity increases, among other benefits.

Advance planning and due diligence

Set out below are some of the key objectives that many acquirers will be looking to achieve as part of the transaction.

Acquiring all the target's shares

The acquirer will generally be looking to ensure that it acquires 100 per cent of the target's shares, either at completion or within a short period thereafter.

Where employees hold rights to acquire shares (eg, awards), as opposed to holding actual shares, then generally the employees will have an opportunity to acquire shares in the target pursuant to the vesting or exercise provisions in the target's share plan rules.

The acquirer must determine how it will acquire the target (eg, an acquisition agreement or a merger) and then consider how the transaction impacts outstanding awards.

The acquirer will generally be looking to ensure that any outstanding awards:

- vest (and, if applicable, are exercised) and shares in the target are acquired by employees;
- are cash-cancelled by the acquirer;
- are exchanged for new awards over the acquirer's share capital; or
- lapse (to the extent the award does not vest or is exchanged for a new award over the acquirer's shares).

Share plan due diligence

When a company is up for sale, its board will often have instructed professional advisers to prepare an in-depth report on its financial health that could be shared in whole or in part with potential acquirers at the very initial stage of discussions. This is called a vendor due diligence. Acquirers will require their own full due diligence report pre-completion on which they can rely.

As part of the vendor due diligence, the adviser will usually flag to the target's board of directors any material issues that need to be addressed. A robust vendor due diligence report should flag up any material issues, such as defective awards. This will allow the target company to get 'its house in order' at the earliest opportunity.

If an award needs to be exercised pursuant to the transaction, the acquirer must confirm that the share plan rules state that if the award is not exercised by a set date, it will lapse. If the plan rules have defective change of control provisions such that unexercised awards do not lapse, then the acquirer must either see if the plan rules can be amended or put in place a mechanism to acquire any new shares that are issued by the target post-completion (eg, by changing the target's constitutional documents). This is to avoid a situation whereby the acquirer initially purchases 100 per cent of the target's shares, only to find that new shares need to be issued at a later date pursuant to subsisting awards that the acquirer is unable to acquire.

As the acquirer will generally be purchasing the target based on a flat purchase price, it will not be overly concerned by the number of shares in issue, provided it is able to acquire all of them at or shortly after completion.

PAYE due diligence issues on incentives

Where employees have taken a temporary salary sacrifice or bonus deferral owing to the covid-19 pandemic, and have been granted shares or options by way of compensation, it is vital that the sacrifice or deferment is correctly structured to ensure that a tax withholding obligation does not arise in respect of the sacrificed or deferred income. It is surprising how many sacrifice and deferral arrangements are defective from a tax perspective.

Where an employee acquires shares in exchange for sacrificed salary, there is sometimes a perception that no income tax liability will arise on acquisition of the shares on the basis that the employee has paid full value for the shares (ie, the scarified salary). This is not the case, and a tax liability will generally arise to the extent that the amount actually paid for the shares (if any) is less than the current market value of the shares.

In other instances, we have seen shares awarded to employees for no payment on the assumption that no tax liability would arise because the company is currently making a loss – the thinking being that the shares must have negligible value. This is generally not the case, and a tax and social security liability is likely to have arisen on the acquisition of the shares.

Jurisdictions in which share plans are operated

Consideration should always be given to the location and tax residency position of the employees holding awards as part of the overall due diligence process. If the target has employees based in multiple jurisdictions or has overseas workdays, then an analysis of the tax, social security and employment law regime in each jurisdiction must be undertaken to ensure that all tax compliance, regulatory and legal obligations are complied with; therefore, as noted at the outset, starting the due diligence process as early as possible is strongly recommended.

Value to share plan participants and cost to acquirer

The acquirer will usually want to understand the aggregate value to be received by the target's key management as a result of selling their shares pursuant to the transaction as compared to the amount of money that management may be reinvesting in the acquiring company (if applicable). This is to ensure that management remain suitably locked in, incentivised and aligned with the interests of the acquirer's shareholders post-completion.

There is always a concern where the management are receiving substantial sums as a result of the sale of their shares that they are not reinvesting – the concern being whether management will still have the same level of motivation post-completion. This can potentially be addressed by the grant of new cash- and share-based incentives post completion.

The acquirer will also want to understand if there are any other payments due to target employees as a result of the transaction. If so, it will wish to ensure that the cost of these payments is factored into the value of the transaction via an adjustment to the purchase price.

Summary

In summary, the key point to take away is that the target should provide to the acquirer:

- all the applicable information regarding subsisting awards over its share capital;
- copies of the share plan rules (and other incentive arrangements) together with sample ancillary documentation; and
- information on the way in which any discretion within the share plan rules is or will be exercised (to the extent this discretion has already been considered).

This will allow the acquirer to have an accurate picture of the number of shares to be acquired pursuant to subsisting awards so that there are no surprises for the acquirer at more advanced stages of the transaction.

Changes to quantum or treatment of outstanding awards can cause ill feelings on both sides of the transaction. This can be avoided by ensuring that there is complete clarity from the target from the outset.

Key HR issues to consider

There are numerous complex HR issues that must be considered as part of a transaction. We have highlighted some of the more common issues below.

Discretions within share plans

Where the target's share plan rules contain wide-ranging discretions, it is important to ensure that employees are treated fairly and that any discretion is not exercised in an arbitrary, capricious or irrational way.

Restrictive covenants pursuant to the transaction

The acquirer will generally want management to remain within the acquirer group post-completion. There should be provisions in place such that if any management do leave, they will be subject to suitably robust and enforceable restrictive covenants to prevent them from competing with the acquirer group post-completion.

The terms and enforceability of restrictive covenants is a very complicated and litigious area; therefore, legal advice should always be sought before amending, introducing or enforcing restrictive covenants.

Consultation in advance of the transaction

There are always employment law issues to be considered on transactions, and legal advice should always be sought at the earliest opportunity. If there are obligations for the target or acquirer to consult with target's employees, employee councils and unions, this must be highlighted as soon as possible as it will impact the timing of the transaction (especially if the consultation needs to be undertaken in multiple jurisdictions).

Sharing personal data

It is extremely important that the target consider how it shares the personal data of its workforce with the acquirer and its professional advisers. This is an area that is currently under intense scrutiny, and the legal, financial and regulatory implications of getting it wrong can be severe.

Harmonisation of pay, benefits and terms of employment

Some acquirers may look to harmonise the terms and conditions of the target's employees, in some of or all the applicable jurisdictions, with those of the acquiring group's employees post-transaction.

The acquirer and target should consult with employment lawyers before considering any changes to the terms and conditions of target's employees. This is equally applicable in the event that the acquirer is considering relocating the target's employees or making some of them redundant.

Communication with share plan participants

Once the transaction is at a sufficiently advanced stage, the target or acquirer, or both, will need to write to award holders to explain the impact of the proposed transaction on their subsisting awards and what the award holders need to do (if anything) to realise value from their awards.

Clarity of share plan letters

Any communication should be clear and concise and set out exactly what the award holders need to do (if anything), by what and the implications of not doing so.

For many companies, their greatest asset is their employees. If the employees are of the view that their employer or the acquiring company is not treating them fairly or reasonably in respect of their subsisting awards, then, apart from any legal claims that may have arisen, there is the risk that some of the target's key employees may decide to leave on or before completion.

Terms of share plan letters

The acquirer will often ask to review and comment on the communications with award holders, and it is not uncommon for the letters to come jointly from the acquirer and the target to show a unified position from the outset.

If the share plan letters are joint, this may well be the first communication that the target's employees have received from the acquirer. The letters should, therefore, be carefully drafted to ensure that not just the content of the letter is accurate, but that it also sets the right tone.

Vesting and settlement of share plan awards

The extent and timing of when awards vest, and the way in which the awards are to be settled, depends on the nature of the transaction and identity of the acquirer.

Vesting of awards

Awards are usually structured so that they vest over a three- to five-year period, with potentially accelerated vesting on a transaction. There may also be some holding period for any shares acquired post-acquisition. The extent to which the awards vest may be subject to the satisfaction of performance targets. Alternatively, the awards may not have a specific vesting period and may only vest upon completion of the transaction.

The share plan rules may specify that there is accelerated vesting on a transaction or it may be at the discretion of the board.

It is common in certain jurisdictions to have what is referred to as 'double trigger' vesting on a transaction. This means that the vesting period would not be accelerated on a transaction, but instead the award would continue to vest as normal, but with accelerated vesting in the event that the employee ceases employment for a 'good leaver' reason (eg, typically material reduction in base salary, material change in role or relocation) within a set period following the transaction.

Satisfaction of awards

The share plan rules usually state what happens to awards on the transaction. Depending on the jurisdiction in which the target is located, the share plan rules may be very precise on how awards are treated, or alternatively they may allow the target board wide-ranging discretion.

Awards are normally treated in one of four ways on a transaction.

- Satisfied in shares: once the award vests (or is exercised by the employee), the target will either issue or procure the transfer of shares to the employee. The employee will usually sell their shares to the acquirer for cash or shares in the acquirer.

- Cash-settled: the share plan rules may allow the award to be settled (in cash rather than in shares). The payment of cash to settle the award will be made by the target pursuant to the terms of the share plan rules.
- Cash-cancelled: the cash payment will be made outside the share plan rules whereby the acquirer invites the employee to cancel their award over the target’s shares in exchange for a cash payment equal to the inherent value of their award (ie, the market value of the target’s shares subject to the award minus any price payable to acquire them).
- Exchanged or rolled over: this will allow the employee to exchange their award over the target’s shares for an equivalent award over the acquirer’s shares. The number of shares and the exercise price (if applicable) will be adjusted to preserve the intrinsic value of the award. This may be useful where the award has not vested in full and it also has beneficial tax upon vesting or exercise; therefore, by allowing the award to vest on the stated date will allow the employee to be taxed more favourably. If the target’s share plan rules have a discretion to force employees to exchange their awards for a new award over the acquiring company’s share capital, this can be useful where the target and acquirer agree that subsisting awards should not vest on the transaction for key commercial reasons.

Trusts

In some jurisdictions, it may not be possible, from a corporate law perspective, to issue new shares to satisfy share-based awards for less than the nominal (or par) value of the target company’s shares; therefore, the target group may wish to establish a trust that can subscribe for new shares in the target company using funds provided by the target group. The trustee should then be able to transfer shares out of the trust to the target group’s participants in satisfaction of their share-based awards without breaching this aspect of corporate law.

Trusts are also frequently used to satisfy share-based awards to safeguard corporation tax deductions that may be available for the target group rather than allowing the awards to be cash-cancelled or settled by the target company or the acquirer.

Performance targets attached to awards

Many unlisted companies grant awards that vest subject to satisfying some underlying performance criteria, such as a balanced scorecard of key performance indicators.

The performance targets should be designed so that they are aligned with the company’s business plan for the duration of the vesting period.

As incentives drive employee behaviour, it is extremely important to ensure that the performance targets are driving the right kind of behaviour.

Directors may consider the exercise of available discretions in share plan rules where the company has performed extremely well in comparison to competitors, but the performance conditions have not been satisfied to the extent that they would have been but for recent and very substantial market turbulence.

Shares versus awards

Where employees hold shares, as opposed to awards, those shares will generally be treated in the same way as the target’s other shares.

If some of the shares held by employees have not fully vested at the time of the transaction, and there is no accelerated vesting, then the employee may forfeit some of their shares and choose to sell the balance of their shares to the acquirer.

Managing the tax liabilities when awards vest or are exercised

Collection

Generally, any tax liabilities that arise at the time of the transaction must be collected from the employees via withholding rather than self-assessment. The acquirer will wish to ensure that the target is able to collect tax liabilities that arise from any subsisting awards; therefore, the due diligence process should ensure that the share plan rules have robust tax withholding provisions that are valid in all the applicable jurisdictions.

Overseas jurisdictions

In certain jurisdictions, employees may be required to enter into elections to ignore (for tax purposes) any restrictions that apply to the shares acquired upon the vesting of their awards (eg, in the United Kingdom and the United States).

In some jurisdictions, it is possible for the employing company to transfer to the employees any employer’s social security liability that arises when the awards vest (eg, in the United Kingdom). This is much more common owing to the current turbulent market and company’s desire to conserve cash.

Adjusting the purchase price

The acquirer will generally look to adjust the purchase price by the amount of any employer’s social security liability that arises pursuant to the transaction.

Equally, if the target is able to claim a corporation tax deduction on the vesting of awards, then the target will generally look to receive credit from the acquirer for the amount of this deduction to the extent that the acquirer is able to utilise it.

Advance planning

Where tax liabilities arise in multiple jurisdictions, it is important that tax advice is received by the target and acquirer in sufficient time to allow the payroll teams to manage those tax liabilities and comply with any reporting obligations.

Key share plan issues that arise on transactions

There are many expected and unexpected share plan issues that arise on transactions. Some of the more common ones are as follows.

Tax liabilities

Subsisting awards that were intended to qualify for beneficial tax in certain jurisdictions upon vesting or exercise may not do so. This may be for a combination of reasons, including:

- regulatory filings having not been made by the applicable deadlines;
- a disqualifying event occurring pre-vesting;
- the awards having not been held by the employee for the requisite period; or
- the target or employee having never satisfied the original qualifying criteria.

This can result in unexpected tax liabilities arising for the employees and the target. It is then a question of whether the target wishes to compensate the employees for the additional tax liabilities that arise.

The acquirer will generally look to adjust the purchase price for any additional liabilities and costs that arise.

Corporate tax

It is not uncommon for the target, or the acquiring company, to cash-cancel or cash-settle the target’s outstanding share-based awards; however, care should always be taken when cancelling or settling awards in cash as there is a risk that any corporation tax deduction that may otherwise have been available to the target group in any jurisdiction may be lost as a result of such action.

As share-based awards may be over a significant minority of the target’s share capital, any corporation tax deduction may have material value to the acquirer post-completion (which may need to be paid for as and when used by target group).

Earn-outs

A proportion of the aggregate purchase price on some transactions may be subject to an earn-out. This means that only a proportion of the total consideration is paid out at completion with the balance paid out post-completion (depending on the performance of the target).

Advice must be provided to all parties in respect of tax implications of the specific terms of the earn-out to ensure that it is taxed as capital rather than income in the hands of the target’s shareholders.

Warranties

It is a point of commercial negotiation that shareholders provide the warranties. Generally, it is the key shareholders that provide these, but, in some instances, the warranties are provided by all shareholders at the point of completion, which would include all employees who are selling shares following the vesting of their awards.

Amending the share plan rules

It may be appropriate to amend the terms of the share plan rules to ensure that they fit the terms of the transaction; however, advice should always be sought when amending the share plan rules to ensure that there is no corporate or regulatory breach and that the amendment does not have adverse tax or legal implications.

Post-transaction issues

As part of the steps plan, consideration should be given to any compliance obligations in respect of the share plan post-completion.

Retention and transaction bonuses

Market practice

In the run-up to a transaction, it is quite common for companies to put in place some form of retention or transaction bonus for management in addition to any subsisting awards that may have already been granted.

Commercial justification for bonuses

The logic behind granting such bonuses, which may be satisfied either in cash or shares, is to reward management for the additional work, stress and pressure that arises pre-completion. In addition, it is also to ensure that management, who are key to the transaction, are incentivised to get the deal ‘over the line’.

From the target’s shareholders’ perspective, they are often happy to reward management in circumstances where the target shareholders are able to sell their shares for cash and realise a substantial gain; therefore, the bonus further aligns the management’s position with the target’s shareholders. The quantum of the bonus may be linked to the eventual exit price.

Adjusting the purchase price

The cost of any retention or transaction bonus will ultimately be borne by the target’s shareholders by way of an adjustment to the purchase price. The acquirer will be interested to know details of any bonus awards to ensure this does not lead to the target’s employees engaging in activity that drives them to focus on one performance indicator (eg, revenue or profit) at the expense of another (eg, risk).

Bonus recipients

When moving towards an exit, some targets set up a bonus pool that will be shared among all employees at completion (rather than just management). Acquirers are often very supportive of these sorts of bonus arrangements and may be prepared to part-finance them as part of the overall transaction.

However, care should always been taken when structuring transaction-related bonuses because, in some jurisdictions, the employing company may not be able to claim a corporation tax deduction for the cost of the bonuses as they are seen to be a cost of the transaction and, therefore, capital in nature rather than revenue.

General comments on the awards

For most companies, their employees are their most valuable asset; therefore, ensuring that the management, together with the wider workforce, are locked in and incentivised post-completion is extremely important.

Agreeing the terms of awards

As part of the negotiations, the acquirer will generally look to agree the terms of any new awards to lock in, motivate and reward management over the short- to medium-term while integrating the target into the acquirer's group.

The acquirer will generally want the management to sign-up to those terms (together with new service agreements, restrictive covenants and remuneration packages) pre-completion to ensure that the management are locked in for the foreseeable future.

If the management leave, any new awards are likely to lapse.

Integrating management

While the target is being integrated into the acquirer group, the acquirer will have the opportunity to review and assess the performance of management to determine which members of the team are key to the business going forwards.

Terms of new incentives

The terms of any new awards will depend upon who the acquirer is and what its long-term objectives are.

If the acquirer already operates a share plan, it is likely that the acquirer will look to bring the management within the existing share plan to align the management with the acquirer's management team. The acquirer may look to incentivise the management with a bespoke incentive arrangement that may include using equity in the target.

Awards over shares in the target may be used so that the management can directly influence the value of their awards, as opposed to awards over the acquirer's shares, which may be much more difficult for them to influence (depending on the size of the acquirer).

Making the awards tax-efficient

Depending on the applicable jurisdiction, it may be possible to structure the awards so that they fall within a beneficial tax regime. This may mean that the employee is subject to capital gains tax, rather than income tax, on all commercial growth in the value of the shares from the date of acquisition or, if earlier, the date on which the award over the shares was made. It can also save any employer's social security liability that might otherwise have arisen.

Sign-on and buyout awards

It is common in many sectors (eg, banking, insurance and financial services) for new hires in senior management positions to receive sign-on bonuses, or for their new employer to buy out some of or all the awards that the new hire will forfeit as a result of leaving their former employer. The awards are often structured such that they will have to be repaid if the new hire leaves before the end of a specified period.

In the event that a sign-on bonus, or buyout payment, is clawed back, the amount is often 'clawed back' on a net-of-tax basis, leaving the new employer with a substantial cost equal to the tax and social security paid to the revenue authorities; however, structures can be put in place to deliver the same commercial outcome for the new hire, but that avoid any tax or social security leakage should the new hire leave within the specified forfeiture period. This can save the new employer substantial amounts of income tax and social security liability that, in the current environment, is likely to be of significant interest.

Comparing awards granted post-trade sale versus post-private equity sale

We have set out some general comments on the type of awards that are typical in trade and private equity transactions and have looked at how their terms compare.

Trade transactions

If the acquirer is a trade buyer, it is likely that it may look to bring the management within the terms of its existing share plans. This is likely to mean that the incentives offered to management have higher 'day one' value than the typical awards granted to management in a private equity transaction, but with lower potential growth opportunity.

That said, the management on a trade sale do not generally reinvest material capital sums in the acquirer vehicle; therefore, management in private equity transactions will generally be looking for higher returns from their awards as a quid pro quo for the capital they have at risk.

The terms of any new incentives in the acquirer are more likely to be akin to the target's original incentive arrangements, with a mix of annual cash bonus awards and long-term share-based awards (which vest over a three- to five-year period, subject to stretching performance conditions).

Private equity transactions

Private equity transactions are generally highly leveraged, meaning that the private equity-backed acquiring company (the PE Co) will have a high level of debt compared with its share capital.

Private equity investors will generally subscribe for a small proportion of ordinary or preference shares (less than 1 per cent) in the PE Co, and the balance of the purchase price will be funded via shareholder loans into the PE Co's group structure. These are generally referred to as the 'institutional strip'.

To lock in and incentivise the management post-transaction, the management will normally acquire a stake in the PE Co on similar terms to the private equity house; therefore, the management will normally acquire some ordinary shares in the PE Co at no cost, together with some preference shares or loan notes for full market value so that they have a material amount invested within the PE Co.

Independent advice

The management will, therefore, be both a seller and buyer pursuant to the transaction. It is always recommended that management seek independent legal and tax advice in respect of the transaction.

Sweet equity

The ordinary shares acquired by the management are often referred to as 'sweet equity' and are generally seen as the key incentive for the management. This is because relatively small increases in the value of the PE Co can have a disproportionate increase in the value of their sweet equity. This is owing to the small number of shares in issue.

As the sweet equity is generally acquired by the management at no or nominal cost, it is usually subject to 'good' and 'bad' leaver provisions. All the incentives are generally exit-related, so the management can realise substantial gains if they remain within the PE Co until a successful exit.

The management can generally expect to receive between 10 per cent and 25 per cent of the ordinary shares of the PE Co, depending on the size of the transaction, the amount that the management wants to or is required to reinvest in the PE Co and the relative strength of the management's bargaining position.

Often, not all the sweet equity is distributed to the management at the outset: a pool of sweet equity is often set aside for new joiners. In the event that not all the pool has been allocated at the time of an exit, the PE Co's board will normally allocate it on a fair and equitable basis.

Debt

The preference shares or loan notes will normally attract a relatively high yield to reflect the risks associated with investing in the PE Co. As the management will have paid for those shares or loan notes, there are generally no leaver provisions, but the annual yield may decline in the event that the management leave the PE Co prior to an exit.

Trends within global mobility and remote working are also quickly changing. Employees who have found themselves working from home for the past year have fast become empowered and found a greater voice to dictate their preferred working patterns. Employers are quickly quantifying the benefits of a more permanent remote working approach, with potential cost reductions and productivity increases, among other benefits.

Source: BDO LLP

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