Multinational Companies Take Note: UK Proposes Seven Years in Jail for Mismanagement of DB Plans and other Criminal and Civil Penalties for DB Plan Failures

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The UK has had a number of high profile pension failures in recent years, including those of construction firm Carillion and retailer BHS, and going all the way back to Robert Maxwell's Mirror Group. In response, in early 2018, the UK government floated a number of reforms to the defined benefit (DB) regulatory framework and the powers of The Pensions Regulator (TPR). We wrote about those possible reforms here: https://www.groom.com/wp-content/uploads/2018/04/UK-Publishes-White-Paper-Proposing-Defined-Benefit-Plan-Regulatory-Changes.pdf. The TPR serves a role similar to the Department of Labor (DOL) in the United States, as well as fulfilling some of the roles of the Pension Benefit Guaranty Corporation (PBGC), including operating the UK version of Reportable Events (which in the UK is the "Notifiable Events Framework"), and the early warning-type program, including negotiating to protect pensions in transactions ("Clearance" process in the UK).

The UK government has now come out with the "Government Response to the Consultation on Protecting Pension Schemes – A Stronger Pensions Regulator", and it contains some provisions that should be of interest to US-based and other multinationals with DB pension plans in the UK. The most important of these may be new criminal penalties, which would now include up to 7 years' imprisonment and unlimited fines for "wilful or reckless behaviour in relation to a pension scheme". This could apply to the sponsoring employer and any others "associated or connected". For other new offences, such as failure to comply with a Contribution Notice or Financial Support Directive issued by TPR, or the Notifiable Events Framework, substantial criminal or civil fines could result.

The actual legislation has not yet been introduced - the UK government will do so "as parliamentary time allows" - so the details are not yet available. In addition, the UK government "will continue to engage with stakeholders on the detail". However, the prospect of this major tightening of UK pension regulations and possible criminal penalties seems likely to influence the decisions around pension funds and transactions involving UK pension plan sponsors in the future. Multinational companies will want to consider these. In this regard, the UK has seen a movement toward de-risking pensions similar to the US and government initiatives such as these may well accelerate that trend.

A chart of the new proposed offences, the criminal and civil sanctions, and who would be liable is included in the Government Response as follows:

New Offence	New Penalty	Target
Wilful or reckless behaviour in relation to a pension scheme	Criminal offence: up to 7 years' imprisonment and/or unlimited fines And/or New civil penalty: up to a maximum of £1 million	Sponsoring employers and others associated or connected
Failure to comply with a Contribution Notice	Criminal offence: unlimited fines And/or New civil penalty: up to a maximum of £1 million	Sponsoring employers and others associated or connected
Failure to comply with a Financial Support Direction	New civil penalty: up to a maximum of £1 million	Sponsoring employers and others associated or connected (Not individuals with the exception of controlling shareholders who are individuals)
Failure to comply with the Notifiable Events Framework	New civil penalty: up to a maximum of £1 million	Sponsoring employers and trustees
Failure to comply with requirements for a Declaration of Intent	New civil penalty: up to a maximum of £1 million	Sponsoring employers and others associated or connected
Knowingly or recklessly providing false information to trustees	New civil penalty: up to a maximum of £1 million	Any person who is required to provide

If you have any questions about these new developments, please contact David Powell or your regular Groom lawyer.