

The background image shows a modern office space. On the left, there is a desk cluttered with papers and office supplies. A large window in the center provides a panoramic view of a city and a body of water. On the right, three people are standing near another large window, looking out at the city. The overall lighting is dim, with the primary light source being the natural light from the windows.

Case Study PN1: Company Sale, Pensions Transfer

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Agenda

Part 1

- Introduction to the case study

Part 2

- Issue #1: Managing our advisory roles

Part 3

- Issue #2: Bulk transfer valuation

Part 4

- Conclusions

Agenda

Part 1

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Part 2

- Problem #1: Managing our advisory roles

Part 3

- Problem #2: Bulk transfer valuation

Part 4

- Conclusions

Introduction to the case study

- We are an actuary in a firm of consulting actuaries
- We have interactions with Seller Plc.
 - Operates a defined-benefit (“DB”) pension plan
 - We advise the company on their pension benefits
 - We act as Scheme Actuary to the trustees
- Same relationship with Buyer Plc.
 - Operates a DB pension plan
 - We advise the company on their pension benefits
 - We act as Scheme Actuary to the trustees

Introduction to the case study (contd.)

- Seller Plc. is considering the sale of one division of the company, containing several hundred employees
- FDs of Buyer Plc. and Seller Plc. both approach in confidence to ask us to advise on the pension aspects of the transaction
 - Transfer of accrued pension rights!
- Seller Plc. approached first and we have already agreed to advise them
- Myriad issues, we focus on two:
 - Issue #1: managing our advisory roles
 - Issue #2: bulk transfer valuation

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Part 3

- Issue #2: Bulk transfer valuation

Part 4

- Conclusions

Issue #1: Managing our advisory roles

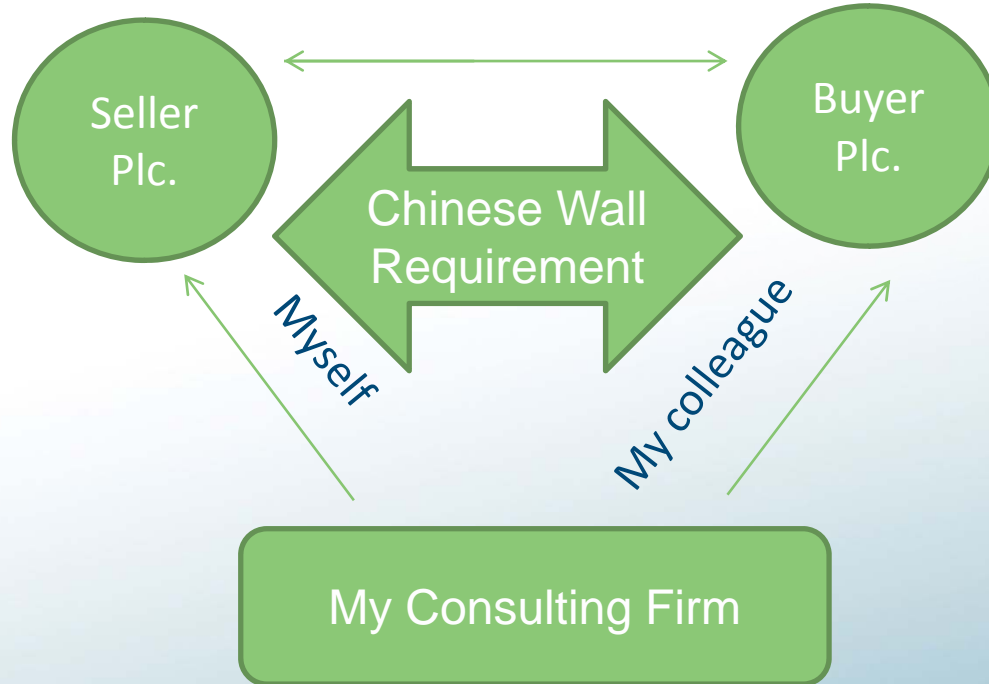
- What are the challenges in retaining our advisory roles through the transaction process?

Conflict of interest

- There is a conflict of interest
 - Interests of Buyer Plc. and Seller Plc. almost diametrically opposed
 - Further, for each client, need to wear two hats
- As per PCS 5.2, just the outward appearance of a conflict necessitates steps:
 - “If there is **or might appear to be** a conflict of interest between two or more clients of a member or of the member’s firm....”
 - Must inspire public confidence!
- As per PCS 5.3, the conflict should be disclosed to all parties post-haste:
 - “In the event of any such conflict or probable conflict of interest, the client or clients involved **must be notified at the earliest opportunity....**”
 - Avoid any perception information has been suppressed
- May be inappropriate to act as the adviser to both parties in the transaction

A Chinese Wall to the rescue?

- Could we retain our role with Seller Plc. and have a colleague act for Buyer Plc., in conjunction with a Chinese Wall?
- Do the dynamics in our firm make a Chinese Wall feasible?



- Possible concerns:

- Sufficient strength to have completely distinct teams?
- Internal data protections allow sufficient ring-fencing?
- Geographic separation possible?
- Integrity of our people beyond doubt?

Involving other actuaries?

- Is a Chinese Wall enough?
 - Would it give parties enough confidence about independence (and the appearance thereof)?
 - Are there people (with the relevant immunity and skill) within our firm?
- Would it be better to suggest an outside party to act?
- Does our input on selection of alternate actuary introduce implicit prejudice?
- Is it even feasible for us to act to either party, given the privileged knowledge already shared with us?
- Would it be preferable to act for (and only for) Buyer Plc.?
- Take legal advice?
- Always keep in mind:
 - Best interests of the client
 - Protocols in changing an actuary

Confidentiality

- A lack of confidentiality undermines the other steps taken to manage conflicts
- Extreme care must be taken by all the involved actuaries to safeguard information
 - E.g. restrict access to documents, make service delivery team as compact as possible, hold telephone calls in private places
- As per PCS 2.5.1, make sure your client is comfortable with discussion of their affairs:
 - “As a matter of law, information acquired by a *member* in the course of professional work is frequently confidential to the *member’s* client or the *member’s* firm. As such, it **should not normally be disclosed unless consent has been obtained from the *member’s* client or the *member’s* firm**, as the case may be.”
 - Either client approval received, or information publicly available
- ICAI Code of Ethics as a further reference point

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Part 3

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Part 4

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Issue #2: Bulk transfer valuation

- An arrangement is reached whereby we only act for Buyer Plc.
- Buyer Plc. and Seller Plc. have negotiated a sale/purchase agreement (“SPA”) including the actuarial basis for the bulk transfer value (“BTV”)
 - This is now an exercise in determining the BTV
 - SPA instructs us to ‘agree’ the valuation with the opposing actuary
- Seller Plc.’s actuary has calculated the BTV to be INR 10.00m
- We have determined the BTV, with accrued fees thus far of INR 20k
- What happens if:
 - 1) We determine the BTV to be INR 10.20m
 - 2) We determine the BTV to be INR 10.02m
 - 3) We determine the BTV to be materially less than INR 10.00m
 - 4) We instead advise Seller Plc.

1) We determine BTV of INR 10.20m

- If we determine the fair transfer value to be above INR 10.00m, we are taking less in transferred assets than the expected cost of provision
- Is the difference material?
 - Client may consider 2% difference substantial
 - Consulting fees should be kept in mind as a factor in the materiality prism
- As per APS P1 (section 4.1), we should alert our client to the difference in transfer valuations
- The pre-agreed basis and universal guidance should leave small margin for differential, so this could be a red flag that one side (or both) have misinterpreted the transfer
- An inability to reconcile a material difference in the BTV under the SPA may reflect badly on the actuarial parties (as well as the profession at large)
- So how do we proceed?

1) We determine BTV of INR 10.20m (contd.)

- Could it be due to ambiguity in the SPA?
 - Seek clarification from our client
 - Not our duty to pass judgment on the SPA
- At a minimum, we should seek to identify the source of discrepancy
 - Same understanding of plan provisions?
 - Same data?
 - Make sure we are compliant with GN11
 - Peer review as per GN48, if appropriate
- As always, per PCS 8.1, should not readily opine criticism of another's work:
 - “*Members* must avoid any action that would **unfairly injure the professional reputation of any other *member***. Criticism of one *member*'s work by another *member* is acceptable, provided that the criticism is properly reasoned and believed to be justified.”

2) We determine BTV of INR 10.02m

- Many of the same considerations as per 1)
- Difference of 0.02% clearly less likely to be considered material
- A strong case for pragmatism
 - Do not want the profession to appear aloof and academic
- Should follow the protocols around documenting our calculation and informing our client

3) We determine BTV of less than INR10.00m

- If we determine the fair BTV to be below INR 10.00m, we are receiving more in transferred assets than the expected cost of provision
- May find ourselves under pressure from our client to ratify the amount - but must keep other considerations in mind beyond short-term 'profit'
- Materiality again a key canon
 - A small discrepancy (e.g. INR 0.02m) unlikely to cause much excitement
- Narrow scope for subjectivity in valuation should leave low margin for discrepancy, so a big discrepancy a headache
 - Have we misinterpreted some aspect of the valuation protocol?
 - Perhaps actuary of Seller Plc. has made an error (potentially leaving them open to a PPI claim)?
- An inability to 'agree' the valuation with the opposing actuary reflects badly on the profession at large
 - But this does not mean we agree without conviction

4) We advice Seller Plc. instead

- Seller Plc. and Buyer Plc. have contrary objectives, but should advising one or the other lead to a difference in how we conduct our valuation?
- Broadly same considerations as if acting for Buyer Plc.
- However, need to be more keenly aware the twin focuses to our role:
 - Advising the company on a commercial transaction
 - Fiduciary duty to the trustees
- For Seller Plc., our fiduciary duty comes in two parts:
 - Duty to the non-transferring members (supported by a lower transfer value)
 - Duty to the transferring members (supported by a higher transfer value)

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Closing summary

- Key themes:
 - Conflicts of interest
 - Confidentiality
 - Materiality
 - Reconciling differences
 - Following guidance (whether professional, legal or from a client)
 - Professionalism in general!
- Any practical experience from the audience?

A photograph of an audience in a meeting or presentation. Several people's hands are raised in the foreground, indicating active participation or agreement. The background is blurred, showing a man in a suit standing at the front of the room. The text "Thank you" is overlaid in the center of the image.

Thank you