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# Getting the Deal Done: Motivation and Retention During Corporate Actions

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# Introduction

Remuneration often one of the most critical - and high profile - issues on a takeover

Target's RemCo has to balance often conflicting concerns:

- the need to preserve the business and to motivate and retain employees to change of control
- the views of shareholders, investor groups and the media
- regulatory constraints - primarily, the Takeover Code; disclosure obligations; the Company's remuneration policy; and employment terms and share plan rules

RemCos run the risk of adverse shareholder reaction, reputational damage and personal liability



# Agenda

## Defence planning

- What can remuneration committees / HR professionals in 'likely targets' do now to best protect their employees' interests?
- Avoiding common design and drafting missteps in documentation
- Particular challenges faced by EU regulated financial services firms

## Transaction/ retention bonuses

- Discussion of potential commercial benefits and risks of transaction and retention bonuses

## Case study



# Be clear about what you are trying to achieve

## What?

- Retention
- Incentivisation
- Post-change of control protection

## Who?

- Directors
- Senior management
- Other key staff
- Employees

## When?

- Phased up to change of control
- At change of control
- After change of control



# Consider the dynamics of the deal

Nature of the deal

Is there a long period to completion?

Prospects for executives and employees

Continuing role or redundancy?

Agreeing remuneration terms – when, by whom and how documented?

Agreed by RemCo, Panel and/or Bidder?



# Your toolkit

	Bonus	LTIs	T&Cs etc
<b>Existing arrangements</b>  Operation pre-change of control  Treatment on change of control	<ul style="list-style-type: none"> <li>- Continue to operate</li> <li>- Targets?</li> <li>- Consider good leaver treatment</li> <li>- Terms?:</li> <li>- Accelerate?</li> <li>- Calculation</li> <li>- Pro-rating?</li> <li>- Clawback?</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to operate</li> <li>- Targets?</li> <li>- Consider good leaver treatment</li> <li>- Targets/ pro-rating</li> <li>- Clawback?</li> <li>- Rollover ?</li> </ul>	Continue to apply  Implement existing change of control payments/protections
<b>Possible new arrangements</b> (Note: remuneration policy restrictions on payments to directors)	Retention bonus?		T&Cs post change of control



# Complications

Interpretation of bonus/LTI  
plan rules and exercise of  
discretions

Company specific

Takeover Code restrictions on  
frustrating action and  
management incentives

Regulatory

Media

External



# Transaction/ retention bonuses

What is the difference between

Transaction bonuses

Retention bonuses

Parachute payments

Commercial benefits and risks

When might transaction or retention bonuses be necessary?

When in the transaction timetable should transaction or retention bonuses be put in place?

When might a transaction bonus be a 'poison pill' or negatively impact deal value?

What are some common design and drafting missteps within transaction or retention bonus documentation?





# SABMiller/AB InBev – case study

- > Agreed £70bn takeover of SABMiller by AB InBev in 2015/16
- > Remuneration arrangements were agreed upfront and included in the announcement and/or Co-operation Agreement

Bonus	LTIs	T&Cs etc
<p>Cash retention bonus for selected employees (excluding ExCo)</p> <p>Agreed mechanics for determining (existing) bonus for FY16 and part year to change of control</p> <p>Clawback waived post change of control</p> <p>Existing bonus design continued for one full financial year post change of control</p>	<p>SAB continued operation of LTI plans until change of control</p> <p>On change of control:</p> <ul style="list-style-type: none"> <li>- Value Share Awards vested by reference to performance</li> <li>- Other LTIs vested in full except LTIs &lt; 12 months old were time pro-rated over 12 months</li> <li>- Clawback waived other than for material restatement/conduct.</li> </ul> <p>Cashless exercise for market value options</p>	<p>T&amp;Cs preserved for at least one full financial year post change of control</p> <p>AB InBev commitment to agree similar protection on divestments</p> <p>Enhanced severance terms for two years post change of control (excluding ExCo)</p> <p>Agreed timetable for AB InBev to notify employees of any continuing role</p>



# Thank You

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