Pension file

Helping employers regain control and reduce costs

Business activities may be impacted by Pensions Regulator's new powers

Proposed powers could lead to increased demands for employer contributions and uncertainty for business

16 April 2008

The proposed increase in powers for the Pensions Regulator will mean more companies seeking clearance and increased demand for additional contributions from trustees. The new powers mean that normal business activities such as re-financing, dividend payments and restructuring will now be at serious risk of Regulator action.

A consultation document setting out more details is due to be issued shortly. In the meantime, employers need to be aware of the proposed changes and consider the impact their business activities will have on their pension schemes, especially as changes are effective from 14 April 2008.

What you need to know

1. The Government is proposing to increase the circumstances in which the Regulator can use its anti-avoidance powers, with effect from 14 April 2008.

2. These powers enable the Regulator to force employers to pay additional contributions or financial support to meet the pension debt, which is the difference between the buy-out cost of the pension liabilities and a scheme's assets.

3. Changes have been prompted by Government concern that innovative business models in the marketplace, particularly those involving buying-out pension liabilities, aim to sever the link between an employer and a pension scheme.

4. The Regulator's anti-avoidance powers allow it to act to stop employers avoiding their pension liabilities, by issuing a Contribution Notice (CN) and/or a Financial Support Direction (FSD).

5. Currently a CN can be issued to an individual or company associated or connected with the scheme employer when there is an act or failure to act that has resulted in the avoidance, or potential avoidance, of the pension debt and that was one of the main purposes of the act. The CN can be issued if the regulator thinks it reasonable and can require an amount to be paid in to the scheme, up to the full buy-out debt.

6. This main purpose test has meant that many employers and others associated with pension schemes have previously taken the view that, as what they are doing is normal business activity, there is no need to incur the time delay and the effort in seeking Clearance from the Regulator and paying the associated cost.

7. Proposed changes to CNs are:

   - Extending the situations where a CN may be issued to those where the effect of an act poses a materially detrimental risk to members' benefits. This changes the current position where the Regulator needs to prove intent.

   - Removal of the provision requiring that the Regulator prove a lack of good faith if an act or failure to act has had the effect of preventing a debt becoming due.

   - Allowing a CN to be issued when there has been a series of acts rather than a single act aimed at avoiding a debt to the scheme. This change is to be retrospective to 27 April 2004.

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8. An FSD requires a parent company or associated party to put support in place for a scheme whose sponsor is either under-resourced or a service company.

9. An employer is under-resourced if it has insufficient resources to meet 50% of the full buy-out debt and an associated company has sufficient resources that, when added to the employer’s, will be more than 50% of the debt.

10. The proposed change to FSDs will allow the Regulator to consider the resources of the whole group of companies, as opposed to one single person, when determining whether or not to issue an FSD. This means that there is unlikely to be any company group in which the employer has insufficient resources that could not be subject to the FSD powers. In effect, the pension debt is now joint and several amongst the group companies.

11. The Government has also said that it intends to ensure FSD and CN powers are not frustrated by bulk transfers of members between schemes. The meaning of this is unclear and will hopefully be clarified in the consultation document.

12. PricewaterhouseCoopers will be responding to the consultation once issued.

What you need to do

1. Consider whether any current or proposed business activity will be materially detrimental to your scheme’s ability to pay members’ current and future benefits.

2. Consider if an application for clearance from the Regulator is appropriate in the event of a transaction, dividend payment or granting of security. If so, factor this into your time frame.

3. Respond to the consultation once issued, or speak to your usual PwC contact so your comments can be factored into the PwC response.

The PricewaterhouseCoopers pensions team has a successful track record in addressing complex pension challenges given our breadth and depth of commercial, financial, HR and pensions expertise.

If you wish to discuss how we can help you, please call your regular contact or alternatively:

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