

Review

Pensions



Pension Protection Fund – action for defined benefit schemes

CHANGES TO D&B SCORING

The Pension Protection Fund has confirmed certain changes to D&B scoring for the levy year 2011/2012. Full details are contained in the PPF's policy statement (which is available in full on the PPF's website).

One of these changes may require immediate action on your part. If your company has branches in three or more regions then you need to contact D&B to check that you are on their list of companies with a 'nationwide' status. Companies classed as nationwide have a lower risk of insolvency, but only those on D&B's list as at 30 March 2010 will count for the 2011/2012 levy. If you think that your company should have nationwide status then please contact D&B Customer Services on 0870 850 6209 to check your status. If you are not on the nationwide list then D&B will need further information from you: so it is advisable to check sooner rather than later.

NEW CONTINGENT ASSETS

If you are planning to put in place a new contingent asset to be recognised by the PPF for the levy year 2010/2011 then this needs to be progressed as a matter of urgency in order to meet the 31 March 2010 deadline.

A few points to note...

Signatory requirements

If your trustee body is made up of individual trustees, the PPF has indicated that all trustees must sign the contingent assets document in the presence of a witness (regardless of any alternative provisions in the scheme's trust deed). Where there is a corporate trustee, execution will be by two directors, a director and the company secretary or a director in the presence of a witness. Please build trustee availability into your timetable.

Evidence of benefit to guarantor

For all new contingent assets, the PPF will require evidence that the benefit to the guarantor (or charger, or purchaser, as appropriate) of entering into the contingent asset agreement has been considered and established. This evidence may be specific confirmation from the directors, notice in the board minutes or confirmation in the legal opinion.

Group company guarantees

Hammonds can normally accept instructions to implement group company guarantees right up to the 31 March 2010 deadline, but when time is short there should be minimal negotiation of the document and all signatories should be available. The parties should also remember that if the guarantor is based overseas, the PPF requires a legal opinion on the guarantor from counsel in the relevant jurisdiction. Such overseas legal opinions can take time to obtain and we need to review and refer to them in our English law opinion. If a guarantor is an overseas company, it is better to instruct us as early as possible.

Charge over property

If you are planning on implementing a charge over property and have not yet started this process then it would now be 'challenging' (but not necessarily impossible) to complete this before for this year's deadline. The PPF require any charge over property to be registered at Companies House and the Land Registry prior to submitting an application. Parties should be aware that the registration of charges is not always an expeditious process and can take a number of weeks to complete. In addition, the PPF application must be accompanied by a full certificate of title and valuation, which also take time to prepare.

Please contact us urgently if you require any assistance with entering into or registering new contingent assets.

FURTHER INFORMATION

If you require any further information please contact:

Francois Barker

Head of Birmingham Pensions
T: +44 (0)121 222 3584
E: francois.barker@hammonds.com

Catherine McKenna

Head of Leeds Pensions
T: +44 (0)113 284 7045
E: catherine.mckenna@hammonds.com

Wendy Hunter

Head of London Pensions
T: +44 (0)207 655 1119
E: wendy.hunter@hammonds.com

Steve Southern

Head of Manchester Pensions
T: +44 (0)161 830 5172
E: steve.southern@hammonds.com

Emma King

Head of Pensions Disputes
T: +44 (0)121 222 3103
E: emma.king@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2009.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.