

In an [age of austerity](#), any cost savings that can be made are to be welcomed. Pension plans and sponsoring employers looking to utilise the various techniques available to minimise the PPF levy should take note of the following key dates:

- Deadline for submission of scheme return via Exchange: **5pm on 28th March 2013.**
- Deadline for submission of contingent assets documentation and associated certificate: **5pm on 28th March 2013.**
- Deadline for re-certification of existing contingent assets: **5pm on 28th March 2013.**
- Deadline for (a) payment of qualifying deficit reduction contributions to pension plans or (b) completion of full block transfers: **31 March 2013.**
- Deadline for certification of deficit reduction contributions made on or before 31 March 2013: **5pm on 30 April 2013.**
- Deadline for certification of full block transfers completed on or before 31 March 2013: **5pm 28 June 2013.**
- PPF levy invoices issued: **Autumn 2013.**

Contingent assets include:

- Type A: Parent or group company guarantees
- Type B: Security over cash, UK real estate and securities
- Type C: Letters of credit and bank guarantees

PPF clarification

The *2013/14 Pension Protection Levy Policy Statement* was published on 17 December 2012 together with revised versions of guidance documentation. The revised versions of the guidance documentation mainly detail clarifications of, rather than any radical amendments to, the existing certification requirements. However, there are a few points worthy of note which are summarised below.

Certification as to guarantor resources

Since 2012, the PPF has required trustees to certify that they believe that the resources of a guarantor are sufficient for it to meet its obligations under a guarantee. The trustees must certify that they *"...have no reason to believe that each certified guarantor, as at the date of the certificate, could not meet its full commitment under the contingent asset."*

The PPF does not generally expect trustees to undertake a covenant review of the guarantor. However, it does expect trustees to take reasonable steps to assess the value of the guarantor's business e.g. reviewing the guarantor's latest set of audited accounts. In addition, the value of the guarantor should be discounted if it would be affected by the insolvency of the pension plan's sponsoring employer. If trustees are unable to satisfy themselves that the guarantor can meet the full amount under a guarantee, they have the option to certify a lower amount. This does not change the substance of the contingent asset agreement, just the amount which is used for the purposes of the PPF levy calculation. Even then, the trustees' certificate is not conclusive as the PPF operates its own (more stringent) testing model. Trustees should consider whether they should replicate this test, which is likely to lead to additional cost. The PPF may request that trustees supply evidence of how they came to their decision on the strength of the guarantor. If the PPF does not agree with the amount certified, particularly if the trustees have adopted a valuation criteria which differs from that of the PPF, the PPF could disregard the guarantee for levy purposes. Accordingly, the trustees should ensure that the decision-making process in relation to the certification is carefully documented, and the basis for evaluating the certified amount is carefully considered.

Legal opinions

The PPF does not expect to see a new legal opinion in every instance of a contingent asset being amended. However, trustees and their advisors should consider whether or not the previous legal opinion will continue to be sufficient for future certifications. Where the legal position has changed, a new legal opinion may be needed, but on a "refresher" basis, rather than on a completely new basis. We would recommend in any event that where any amendments have been made to a contingent asset, legal advice is sought to determine whether or not a new legal opinion is required.



Relaxation of acceptable financial institution

The PPF Board has relaxed the credit rating required for a financial institution to qualify as an "Acceptable Financial Institution", in order to provide a bank guarantee for a Type C contingent asset or to be a custodian of assets for a portfolio of securities underpinning a Type B contingent asset (relating to charges over various assets). The credit rating has been relaxed from an equivalent to AA- on Standard and Poor's credit rating to A-. Accordingly, custodians and issuers of Type B and C contingent assets would qualify with a lower credit rating than previously, which should in turn expand the list of qualifying custodians and banks.

Valuation for security over land

A new Type B contingent asset requires a full valuation of the land being charged that is not more than three months old at the certification date (or a desktop update less than three months old of an earlier valuation). A recertification of a Type B contingent asset requires a full valuation that is not more than fifteen months old at the certification date (or a desktop update less than fifteen months old of a previously submitted full valuation).

Contact

If you are considering putting in place a new contingent asset or re-certifying an existing contingent asset, please discuss this with your usual Squire Sanders pensions contact, or one of the partners listed below, to ensure that all necessary aspects are in hand comfortably prior to the 5pm, 28 March 2013 deadline.

Catherine McKenna

Partner
T +44 113 284 7045
E catherine.mckenna@squiresanders.com

Ian Forrest

Partner
T +44 121 222 3418
E ian.forrest@squiresanders.com

Anthea Whitton

Partner
T +44 113 284 7364
E anthea.whitton@squiresanders.com

Charmian Johnson

Partner
T +44 161 830 5047
E charmian.johnson@squiresanders.com

Wendy Hunter

Partner
T +44 20 7655 1119
E wendy.hunter@squiresanders.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.