

# Review

## Pensions



## “In 2011 we’ll reduce our PPF Levy” - A New Year’s resolution worth keeping!

With January fast passing by, for many of us those New Year resolutions are already becoming a distant memory. Well intentioned gym memberships are starting to look like a bad idea, nails are already being bitten as you try to work out your scheme’s pension input period and the resolve to have a month-long green tea detox is being hard tested by even the quickest look at the Pensions Bill 2011.

“What a depressing way to start a Review!” we hear you cry. Well fear not, there is one New Year’s resolution which is not only worth keeping but is also eminently achievable. So how can trustees and employers of defined benefit pension schemes take action this year to reduce their 2011/12 Pension Protection Fund levy?

### CONTINGENT ASSETS ARE KEY

As in previous years, qualifying contingent assets will continue to play a key part of any levy reduction strategy. The PPF can recognise contingent assets which, if in the correct form and properly certified, act to reduce schemes’ underfunding risk or insolvency risk and in turn reduce the amount of levy payable. Contingent assets relevant for these purposes are:

- 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.

### Time is of the essence...

- If you are planning to put in place a **new** contingent asset to be recognised by the PPF for the levy year 2011/12 then this needs to be progressed as a matter of urgency in order to meet the 31 March 2011 deadline.
- Similarly, if you **already** have a qualifying contingent asset in place that was taken into account for the 2010/11 levy then trustees need to act now to re-certify the asset so that it can count towards the 2011/12 levy. Again, this needs to be completed prior to 31 March 2011.

### Points to note...

- Changes to existing security – if changes have been made to any existing security then hard copies of the changes must be supplied to the PPF at the time of the re-certification. The trustees may also need to supply a “refresher” legal opinion depending on the extent of the changes.
- Property valuations – when re-certifying existing security over real estate, trustees need to provide an updated valuation to the PPF if the valuation previously supplied is at a date more than 15 months prior to the date of the re-certification. This is a change to previous time limits which allowed valuations to be within 3 years of the re-certification date.

Contingent assets  
- time is of the  
essence.

- Signatories – for schemes with individual trustees, the PPF has indicated that all trustees must sign the contingent asset document in the presence of a witness (regardless of any alternative provisions in the scheme's trust deed). Steps should be taken to ensure trustee availability.
- Overseas guarantor – if a guarantor is based overseas, then the PPF will require that a legal opinion on the guarantor is obtained from counsel in the relevant jurisdiction. These opinions can take time to obtain and should therefore be timetabled in accordingly.
- Evidence of guarantor benefit – for all new contingent assets, the PPF will require evidence that the guarantor, chargor or purchaser (as appropriate) has considered and established the benefit to it of entering into the contingent asset agreement and this should be clearly evidenced.

Squire Sanders Hammonds can assist trustees and employers to prepare the necessary documentation required to put in place a new contingent asset or to re-certify existing contingent assets. Whilst we can normally accept instructions close to the 31 March 2011 deadline, early instructions will ensure that the deadline can be met.

## OVER THE HORIZON

On 7 October 2010, the PPF unveiled proposals for a new formula that will be used to calculate the PPF levy from 2012/13 onwards.

Of particular significance is a move away from the current 1-100 D&B score which rates employers' insolvency probability based on a banded approach. Schemes with a sponsoring employer who is on the 'edge' of one these proposed bands may find that a small change in the employer's D&B score over the next few years could result in a significantly increased levy in the future. For example, it is proposed that an employer with a failure score of 42 will attract a levy rate of 1.6% whereas the levy rate for an employer with a failure score of 41 will be 4.0%.

Trustees and employers should work together now to ensure that sponsoring employers' D&B scores are as advantageous as possible. Some simple steps that can be taken are:

- Payments – a poor payment record can adversely impact the D&B score. If this can be improved it should have a positive effect on the D&B score.
- Legal structure – consider the way in which the employer's group is structured. Some structures can result in a weaker group entity being used to determine the D&B score.
- Management – consider whether the management structure and even the number of appointed directors is adversely impacting the employer's D&B score.
- Data accuracy – ensure that the data held by D&B is accurate and correct.

---

## FURTHER INFORMATION:

For further information please contact any of the partners listed below or your usual contact in the pensions team:

### Francois Barker

Partner

T: +44 (0)121 222 3584

E: francois.barker@ssd.com

### Catherine McKenna

Partner

T: +44 (0)113 284 7045

E: catherine.mckenna@ssd.com

### Steve Southern

Partner

T: +44 (0)161 830 5172

E: steve.southern@ssd.com

### Wendy Hunter

Partner

T: +44 (0)207 655 1119

E: wendy.hunter@ssd.com

### Emma King

Partner

T: +44 (0)121 222 3103

E: emma.king@ssd.com

4712/01/11

Squire Sanders Hammonds is the trade name of Squire, Sanders & Dempsey (UK) LLP, a Limited Liability Partnership registered in England and Wales with number OC 335584 and regulated by the Solicitors Regulation Authority. Squire, Sanders & Dempsey (UK) LLP, is part of the international legal practice Squire, Sanders & Dempsey which practices worldwide through a number of separate legal entities. Please visit [www.ssd.com](http://www.ssd.com) for more information.