

PREMIER PENSIONS MANAGEMENT

LEGISLATION UPDATE : 7/05

Withdrawal of an employer where more than one company participate in a U.K. DB Plan

Headline

New Regulations have been issued regarding the debt to be levied on an employer withdrawing from a multi-employer defined benefit plan. The Regulations apply from **2 September 2005** and companies will need to be aware of these potentially onerous obligations when deciding whether to withdraw a participating employer.

The Executive Summary shown below is our understanding of the changes. The Regulations themselves are complicated and specific legal (and actuarial) advice should be obtained in relation to any specific circumstances.

Executive Summary

In June 2003, the Government changed the 'debt on employer' rules so that a solvent employer could not leave a UK pension plan without a sponsor and with insufficient assets to fully buy-out the plan's liabilities. From 2 September 2005, these principals will be further extended so that an employer withdrawing from a multi-employer plan (where one or more other solvent sponsoring employers remain) would need to meet its share of the buy-out deficit.

The new Regulations do enable a less onerous funding test to apply for a '*withdrawal arrangement*' where a lower debt could be payable. Such an arrangement has to be established between the withdrawing employer, the trustees and '*guarantors*', and **must** be approved by the Pensions Regulator. The '*guarantors*' need not be restricted to other participating employers and others within the group (such as a parent) could provide the necessary guarantees.

In such a case, the employer debt due will then be reduced to the MFR debt. It is expected that this will be updated to the employer's share of the deficit on the Scheme Specific Funding basis as the new funding rules gradually take effect over the next couple of years. The debt would also be adjusted to take account of any bulk transfer of the withdrawing employer's liabilities. The withdrawing employer will be liable for the expenses involved in agreeing a withdrawal arrangement, even if there is no debt due.

The withdrawal arrangement will be subject to various conditions. In particular, it will specify the parties that will act as guarantors (possibly for the duration of the plan) who will be required to meet the shortfall in the full buy-out debt either that would have been paid:

- At cessation had there been no withdrawal arrangement; or
- At the point when the guarantee is called if the withdrawing employer had continued to participate in the plan.

Repayment of this debt would be demanded from the guarantors if the plan subsequently starts to be wound up or there are no more sponsoring employers, or if the Regulator issues a notice to that effect.

The Regulator will approve the arrangement if the guarantors have sufficient resources to meet the full buy-out debt. The guarantors must also keep the Regulator informed of any events that impact their solvency (similar to the existing list of employer-related notifiable events).

Once in place, this arrangement would not be considered as an action to compromise an employer debt. In addition, the withdrawing employer would not be included as an employer for the purposes of financial support directions or contribution notices.

Comment

The complexity, cost and ongoing linkage between the “guarantor” and the Plan involved in a '*withdrawal arrangement*' is such that this will only be used as a last resort.

In future, care will be required before making changes to a company's structure and the Company Secretary will need to work closely with those involved in operating the pension plan to avoid unintended triggering of these provisions.

If they do not already do so now, Administrators will need to hold the relevant employing company for each member (irrespective of their category) should such a calculation be required. In any event, you would expect that in future Trustees will (among other things) become interested in the relevant funding positions of participating companies.

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