MAYER•BROWN

Legal Update
February 2018

2018/19 Pension Protection Fund levy – key points for UK pension schemes

The Pension Protection Fund (**"PPF"**) has finalised the rules for the 2018/19 levy year and published the levy deadlines for this year. The levy estimate for 2018/19 is £550 million, a reduction of just over 10% on the 2017/18 levy estimate. Several changes have been made to the levy rules for 2018/19. Invoicing for the 2018/19 levy will start in the autumn.

Employer insolvency risk scores

Where an employer has a public credit rating, that rating will be used to determine the employer's insolvency risk. Also, where the ultimate parent of an employer has a public credit rating, this will be taken into account in calculating the employer's insolvency risk. Where an employer is one of certain regulated financial services entities, the Standard and Poor's Credit Model will be used to determine its insolvency risk. In addition, a new levy rule will be introduced under which "special category employers" (a limited group of entities related to the UK or a foreign government) will be allocated to the lowest levy band. Employers must submit an application to be treated as a special category employer. Finally, five of the eight Experian insolvency risk scorecards will be re-written, while the other three (which relate to group companies) will be recalibrated.

For the 2018/19 levy year only, Experian will use monthly risk scores for the six month period from October 2017 to March 2018 to calculate the average score for the year. From the 2019/20 levy year, Experian will revert back to using monthly scores for a 12 month period.

Employers and trustees can check the employer's insolvency risk score in the PPF portal. Since October 2017, this has included a facility to track credit ratings and model scores, and the PPF is adding a link to a Standard and Poor's "what if" tool which will allow users to see how changes to accounting information will affect their credit model score.

ACTIONS

- Employers and trustees should consider the extent to which the scorecard changes will affect the employer's insolvency risk score and the consequential likely impact on the level of the scheme's levy.
- Employers should ensure that the data being used by Experian to calculate the employer's score is up to date and provide updated data where necessary.
- Where relevant, employers should consider whether to submit a special category employer application. Applications must be made by 31 March.

Contingent assets

Trustees wishing to certify a Type A contingent asset (group company guarantee) will now be required to obtain a guarantor strength report if certification of the guarantee is expected to result in a PPF levy saving of £100,000 or more.

In addition, where there are multiple guarantors, an individual realisable recovery can now be certified for each guarantor so that the total realisable recovery for the contingent asset is provided in aggregate (rather than the trustees having to certify that each guarantor can meet the total realisable recovery in full as was previously the case). In this situation, a separate contingent asset certificate must be submitted for each guarantor.

New standard form Type A and Type B (security over cash/real estate/securities) contingent asset agreements have also been introduced. The main changes to the forms are:

- where the standard form involves a fixed cap on the guarantor's liability, wording has been added to confirm that the fixed cap is unaffected by any claim, whether under the guarantee or otherwise, prior to insolvency;

- where the standard form involves a fixed post-insolvency cap, an optional clause has been added to limit pre-insolvency liability, subject to a requirement that the pre-insolvency limit be substantial (by reference either to the post-insolvency limit or to the regular annual payments under the schedule of contributions), and
- revised wording has been added which clarifies that trustees can agree changes in situations where the amendment and replacement rules in the standard form do not require changes.

The new standard forms must be used for any contingent assets entered into on or after 18 January. Agreements with an earlier execution date that have not previously been submitted to the PPF, and re-certifications (where the original certification was completed using an earlier version of the standard form agreements) can still be submitted for the 2018/19 levy without re-execution on the new forms.

For the 2019/20 levy year, the PPF anticipates that Type A and B contingent assets that include a fixed cap will need to be re-executed on the new standard forms by the deadline for that levy year (the end of March 2019) if they wish to receive levy credit.

ACTIONS

- Trustees with a Type A contingent asset with an expected levy saving of £100,000 or more should make arrangements to obtain the required guarantor strength report.
- Trustees with Type A contingent assets with multiple guarantors should consider how they wish to certify the realisable recovery under the guarantee.
- Employers and trustees wishing to enter into a contingent asset for the 2018/19 levy year should ensure that they use the new standard forms.
- Employers and trustees with existing Type A and B contingent assets should check whether they will need to re-execute them on the new standard forms for the 2019/20 levy year.

Deficit reduction contributions

The regime for certifying deficit reduction contributions (**"DRCs"**) has been simplified by removing the requirement to account for investment expenses when calculating the level of the DRCs. In addition, schemes with liabilities of under £10 million will have the alternative option of certifying contributions made under the schedule of contributions if they are closed to future accrual throughout the certification period and the recovery plan is in force for all or part of the certification period. In this instance, the employer or the trustees (rather than the scheme actuary) will be able to certify the contributions if they do not exceed £1 million and are documented in the recovery plan.

ACTION

Trustees should consider whether any DRCs should be certified and, if so, which certification method should be used. DRCs must be certified by 30 April.

Block transfers

The rules on block (i.e. bulk) transfers have also been simplified so that some transfers will now be treated as "exempt transfers" and will not need to be certified in order to be taken into account in the 2018/19 levy. Schemes will need to apply for a transfer to be treated as an exempt transfer.

ACTION

Trustees should consider whether to take advice on whether any bulk transfers they have made are eligible to be treated as exempt transfers and, if they are, whether to apply for them to be treated as exempt. Exempt transfer applications must be submitted by 30 April.

Key levy deadlines

- 29 March 2018 (5pm) – submission of hard copy contingent asset documents
- 31 March 2018 (midnight) – submission of scheme returns, contingent asset certificates, asset-backed contribution certificates, mortgage exclusion certificates and supporting evidence, accounting standard change certificates, and special category employer certificates
- 30 April 2018 (5pm) – submission of DRC certificates and exempt transfer applications
- 29 June 2018 (5pm) – submission of full block transfer certificates

If you have any questions or comments in relation to the above, please get in touch with your usual Mayer Brown contact or:

Ian Wright
Partner, London
iwright@mayerbrown.com
T: +44 20 3130 3417

Jay Doraisamy
Partner, London
jdoraisamy@mayerbrown.com
T: +44 20 3130 3031

Katherine Carter
Professional Support Lawyer, London
kcarter@mayerbrown.com
T: +44 20 3130 3901