Allan C Martin's Pension Snippets –April 2008

March has been another very busy month for heavy pension news; May I bring to your attention -

Revised Regulator Guidance on Clearance http://www.thepensionsregulator.gov.uk/pdf/clearanceGuidance2008.pdf

Clearance is a voluntary process whereby employers and shareholders associated with a defined benefit pension scheme can obtain a (clearance) statement that the Regulator will not issue a Contribution Notice (CN) or Financial Support Direction (FSD) in connection with a particular deal or event. CNs or FSDs are pretty scary demands for money that the Pensions Regulator could impose for up to 6 years in the future. The threat or fear of such a demand is however a very significant commercial consideration and clearance gives comfort and closure to such a transaction or event.

As is the norm these days, the revised guidance follows consultation from September 2007. The new guidance also builds on the experience of the clearance process from when it was first introduced in April 2005 (Snippets May 2005 refer). The original guidance has been refined rather than re-written and the key elements are –

- a **principles based approach** encouraging a view of the forest rather than the trees;
- updated **guidelines** that employers, shareholders and trustees should apply;
- details of the types of **mitigation** that could be considered, for example more cash - contributions sooner rather than later, security of a normally unsecured pension scheme deficit, parent company guarantees etc;
- concentrating on **Type A events** which crucially involve a pension scheme deficit;
- more information on how to decide upon a relevant **deficit**.

The relevant deficit is scheme and situation specific but will normally be the higher of the accounting (FRS17) basis, the Pension Protection Fund (PPF levy) S179 deficit and the (prudent) "technical provisions" under the new Scheme Funding Principles. However where the clearance event or transaction is "materially detrimental", or there is doubt over the employer as a "going concern", or wind up is likely, then a higher buy out deficit test (S75) is likely.

It is important to stress that clearance is voluntary. Cases involving return of capital, change of ownership, benefit compromise or a significant change in creditor priority will be very wise to seek clearance.

New "Debt on the Employer" Regulations http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080731_en.pdf

At 32 pages the not so snappy-named Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (SI 2008/731) hardly suggests easy reading. The Regulations are indeed long and complex and they come into force on 6th April 2008. The new regime is however very important as it affects the pension debt (a very expensive buy out or S75 debt) that an employer may have to pay on leaving a multi-employer scheme. In practice the debt is faced most commonly on the sale of a subsidiary or the re-organisation of a group of companies.

Again the Regulations have been subject to consultation, this time from August 2007. The end result is some useful flexibility, a bit of potential cost saving but a continuing need to seek advice if you envisage such a situation arising. In particular the new regime brings –

1. clarity around the debt trigger event , including a 12 month period of grace for potential new employees to join the scheme and hence allow existing participation and contribution arrangements to continue;
2. flexibility in the calculation basis of the debt, including scope for pragmatic apportionment of service between employers and no need for audited accounts at the calculation date;
3. practical "withdrawal arrangements" can be made between trustees and employers on the basis of a "reasonable" funding test;
4. similarly "approved withdrawal arrangements" can also be put to the Pensions Regulator on the basis of what is "reasonable" rather than on the more onerous previous basis of "more likely".

These Regulations do provide welcome flexibility and a more practical approach. The need for specialist advice however remains.

And finally; I was recently amused by the implicit lack of supervision associated with the alleged definitive statement of a child that the contents of Grandpa's water bed exactly covered the bedroom floor to a depth of 5 centimetres!

*As always, for further comment, assistance, advisory or trustee services, contact me on **07714 064964** or via allan@acmca.co.uk Feedback on Pension Snippets is always welcome. For further details, the full CV, occasional lecture notes and published articles and previous Snippets - visit the web site at www.acmca.co.uk*