OCTOBER 2006

news

sackers extra

Making Use of Contingent Assets

An increasing number of corporate sponsors and trustees are looking at using contingent assets as an alternative to hard cash when considering scheme funding, or to ease the PPF levy. With this in mind we look at the different types of contingent assets available, why they are becoming increasingly attractive and the issues trustees and corporate sponsors need to take into account.

Contingent Assets

General

- Contingent assets are assets held outside a pension scheme which the scheme can claim on when one or more specified "trigger" events occurs.
- A specified event could be a sponsoring employer becoming insolvent or a failure to meet the scheme's funding target.
- Contingent assets are therefore becoming a key part of scheme funding discussions and negotiations on corporate restructuring.
- The Pensions Regulator (TPR) and the Pension Protection Fund (PPF) have both issued separate guidance on the use of contingent assets. Acceptability to one does not guarantee acceptability to the other.

Contingent Assets

Different types

- The types available include -

  - Cash in a bank account charged to the pension scheme;

  - A charge over assets belonging to the company;

  - Guarantees given by a parent or other substantial group companies;

  - Letters of Credit and Bank guarantees.

Contingent Assets

PPF Levy Guidance

- The trustees' legal advisers must certify that the documents are no less favourable than the PPF standard documentation.
- New standard documentation and guidance has been published for levy year 2007/2008.
- It will be possible to bring existing contingent assets not previously recognised into line with the PPF's standard documentation.

SACKER & PARTNERS

Contingent Assets

TPR Guidance

- Trustees must take legal advice on the documentation, its enforceability and whether the contingent asset is unencumbered.
- TPR has made it clear that trustees must fully understand the business case for using contingent assets.

Contingent Assets

Attractions for the employer

- Contingent assets can be used:

  - to reduce a scheme's PPF levy, provided the documentation meets the PPF's requirements;
  - to reduce the risk of injecting too much cash into a scheme which cannot then be taken out if a surplus develops;
  - to help trustees agree a longer recovery plan;
  - to help obtain clearance from TPR on a corporate restructuring.

Contingent Assets

Key Employer considerations

- Tax and accounting treatment (particularly security over assets).
- Will the PPF levy saving be worth the time and effort needed to ensure that the relevant documentation complies with the PPF's standard approach?

Contingent Assets

Attractions for trustees

- If immediate cash is not available, using contingent assets may provide security against the employer's inability to pay in the event of an insolvency.
- May enable trustees to take additional investment risk (or conversely to hedge out risk).

Contingent Assets

Key Trustee considerations

- Remember – cash is king! Trustees will need to consider carefully the business case for using contingent assets.
- Trustees will need to take into account TPR's guidance.
- Trustees will need to take legal advice on the legal documentation.
- Do the trustees fully understand the contingent asset triggering events?

SACKER & PARTNERS

Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com