Sackers

Hot topic

January 2022

New reporting requirements

Sponsoring employers and trustees of defined benefit (DB) schemes are already required to notify the Pensions Regulator (TPR) of certain events. Draft regulations expanding the existing notifiable events regime have been consulted on and are currently expected to come into force in April 2022.

Since 1 October 2021, failure to comply with the existing or new notifiable events framework – without a reasonable excuse – is punishable by a penalty of up to £1 million, up from £5,000 for individuals and £50,000 for corporates.

This note is based on the current draft regulations, but it is possible that the regulations may change following feedback on the consultation.

New notifiable events

As currently drafted, the new notifiable events are:

Sale by a sponsoring employer of a "material proportion" of its business or assets

A sale representing more than 25% of its annual revenue or gross assets

Either on its own or when combined with other disposals decided upon or completed in the previous 12 months

Granting of security

The grant or extension of a "relevant security" which would rank ahead of the pension scheme

By a sponsoring employer, or one or more subsidiaries of that employer comprising more than 25% of the sponsoring employer's consolidated revenue or gross assets

A "relevant security" includes a fixed or floating charge, as well as a floating charge giving the charge-holder the right to appoint an administrator

Sackers

New reporting requirements cont.

New staged approach

A new staged approach has been proposed for the new notifiable events. The new staged approach will also apply where the employer is a company and control of that company is intended to be or is actually relinquished. (Change of control is an exisiting notifiable event.)

Stage 1

- Where a "decision in principle" has been made (ie prior to any negotiations or agreements being entered into)
- Notification to TPR by the employer

Stage 2

- Where the "main terms have been proposed"
- Notification to TPR and trustees by the employer and anyone associated or connected
- Plus "accompanying statement" (see below)

Stage 3

- If there is a "material change" in either the event or to any proposed mitigation
- Notification to TPR and trustees by the employer and anyone associated or connected

Accompanying statement

Under the draft regulations, the accompanying statement required in stage 2 must include a description of:

- ✓ the event itself
- ✓ the main terms proposed in relation to the event
- ✓ any adverse effects of the event on (i) the pension scheme or (ii) the sponsoring employer's ability to meet its legal obligations to support the scheme
- ✓ any steps taken to mitigate those adverse effects
- ✓ any communication with the trustees about the event

Next steps

Whilst the drafting of the regulations could change, the upshot of the new requirements is that certain corporate plans will need to be shared with TPR and trustees at a much earlier stage. Compliance with the new requirements should therefore be added to the beginning of a transaction plan and reviewed regularly. Parent companies should also take note, as they may be the only party in a position to notify in certain situations.

The "accompanying statement" is intended to generate greater communication between the employer and trustees on how the event may impact the scheme.

TPR has confirmed it will provide more information on the new notifiable events regime in its code of practice and accompanying guidance.

For further information, please speak to your usual Sackers contact. You can also visit www.sackers.com

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 20 7329 6699
E enquiries@sackers.com
www.sackers.com