Pension Protection Fund

CONSULTATION ON THE FIRST REVIEW OF THE INSOLVENCY (ENGLAND AND WALES) RULES 2016: CALL FOR EVIDENCE

RESPONSE FROM THE PENSION PROTECTION FUND

MAY 2021

Background

The Pension Protection Fund ("PPF") is a statutory public corporation accountable to Parliament through the Secretary of State for the Department for Work and Pensions. Our purpose is to protect people with an eligible defined benefit pension when an employer becomes insolvent. We are funded by a compulsory levy from eligible defined benefit pension schemes, by accepting the assets of schemes that transfer to us and by recovering what we can from their insolvent employers. We seek to minimise the amount we levy ongoing schemes by maximising the return we get from insolvent estates and accordingly their cost-effective management is critical.

Response

We have considered the questions that have been raised in the consultation document and believe our points are best summarised as a whole rather than trying to address each question.

Efficiency, Effectiveness & Cost

Our experience is that the new decision procedure for Creditors Voluntary Liquidations ("CVL") introduced by the 2016 rules is actually more expensive/time consuming for IPs than convening section 98 meetings was. For example, one IP firm charged £6k to place an English company into CVL in November 2017. Three weeks later it charged £3k to place another connected Scottish company into CVL (with similar assets and creditors). It cited the 2016 rules, not applicable in Scotland, as the reason for the difference in the costs charged.

There is now more paperwork for creditors at the outset of a CVL than there was before, typically:

- notice of decision procedure by correspondence;
- the vote by correspondence form containing the resolutions;
- the proof of debt form;
- notice of invitation to form a liquidation committee;
- nominations for members of a liquidation committee; and
- notice for opting out of receiving documents

as well as

- the report on the history and reasons for failure, the statement of affairs and the statutory information.

While many of these documents have always been provided to creditors, it has just become more baffling and longer-winded. There may be longer term benefit if creditors opt out of receiving certain documents, but that is more for the benefit of the IPs rather than assisting creditors with their understanding.

Creditor Engagement

We believe that the 2016 rules have reduced creditor engagement. For example:

- There is less opportunity for creditors to come to meetings unless they specifically ask for them, and they often don't have the voting power to do that, even if they want to.
- Directors are therefore less directly accountable to creditors.
- The fact that IPs are no longer required to give notice of annual reports means they can easily be missed unless creditors specifically look for them, which most don't.
- It is harder to replace the members' choice of liquidator at the outset of a CVL because the liquidator is appointed by deemed consent. A creditor wishing to have a different choice of liquidator appointed needs to ask for a meeting.

Creditors are often asked to vote on whether they want a committee every time a decision procedure is required, even if they voted against at the outset.

Wider Creditor Engagement Limiting Factors

Creditor engagement was further restricted by the Small Business, Enterprise and Employment Act 2015 where the appointment of a liquidator following administration was curtailed. Where creditors had concerns over matters such as the conduct of the administration or corporate investigations and prior director conduct, it was open to them to specify at the administration proposals stage their choice of liquidator to be appointed ~~to~~ automatically at the end of the administration. The 2015 Act restricted the automatic move to liquidation to cases where a dividend other than the prescribed part is paid to non-preferential creditors. It should be up to the creditors to decide on the appointment of a liquidator and the automatic move was a cost effective and efficient manner to get that further office holder appointed. The current legislation has put up a further expensive and time-consuming barrier to creditor engagement, forcing any creditors who want to take action through the compulsory liquidation procedure.

Conclusion

The result of the 2016 rules is that the wish to increase creditor engagement while meeting the "red tape challenge" has provided competing objectives that have not been met in practice. Creditors are less engaged and probably more confused about the number of documents they receive.