Pension
Protection
Fund

PPF Restructuring and Insolvency Team
Guidance note 8

Situations involving New or Successor Schemes

We judge every proposal that is put to us on the specific facts relating to the case. We apply these principles in all situations no matter what type of restructuring or rescue is involved.

Contents

1. Background

1.1 This guidance sets out the approach adopted by the Pension Protection Fund ("PPF") to proposals for restructurings involving a new or successor scheme (Successor Scheme Restructurings).

1.2 It should be read in conjunction with the Guidance on the PPF's approach to Employer Restructuring (the "Restructuring Guidance") which is available on our website. The principles set out in this document are in addition to those set out in the Restructuring Guidance.

1.3 Restructurings involving a successor scheme and the PPF are necessarily extremely rare given the requirement of the inevitability of insolvency and affordability of a future scheme for the restructured business.

1.4 The PPF approach will depend on the specifics of the restructuring and proposed successor scheme. All decisions are made on the facts pertaining to the specific case. We consult with The Pensions Regulator ("TPR") on all cases.

2. PPF Practice

2.1 The PPF has specific restructuring principles that it applies in all restructuring situations where the pension scheme is compromised and is likely to enter the PPF. This is set out in our Restructuring Guidance.

2.2 In some instances where the PPF has been approached in relation to a restructuring, the key driver has been to reduce rather than remove pension liabilities for the employer. This is because of the legal difficulties of implementing benefit redesign to lower and control future pensions cost.

2.3 This involves members being offered an opportunity to transfer to a successor scheme with a less generous future benefit structure or to stay in the original scheme which will undergo a PPF assessment period in the near future.

2.4 The proposals must clearly demonstrate that the company is insolvent and satisfy the PPF's restructuring principles.

2.5 The detailed principles are set out in our Restructuring Guidance.

The key points are:

- The proposal should provide a significantly better return than an administration or liquidation and be proportionate considering the section 75 debt that is being eliminated.
- The PPF will seek at least 33 per cent of the equity in the restructured company for the scheme. Should the future stakeholders (such as shareholders/owners/debt providers) be entirely unconnected or involved with the company prior to restructuring we may agree to receive a smaller percentage but this will never be less than 10 per cent.
- Creditors are being treated equitably and the scheme is not being disadvantaged. In particular we look at connected and intra-group creditor positions
- The Company will pay the costs incurred by both the PPF and the trustees in delivering the restructuring.

3. Principles Applying to Successor Scheme Restructurings

3.1 There are a number of particular issues which must be addressed in Successor Scheme Restructurings:

3.2 **Mitigation**

Where there is a successor scheme to which a transfer is proposed, any cash mitigation and equity stake may end up being split across both schemes, depending on the terms of the transfer and terms for delivery of the mitigation.

3.3 **Transfer terms**

The terms for valuing the liabilities for the purposes of splitting the assets and liabilities between the schemes must be fair to both schemes. The PPF considers that that valuation must value the liabilities by reference to the PPF compensation structure on a section 143 basis.

The PPF will not accept a situation where the Successor Scheme takes a greater share of the assets than the proportion of the PPF liabilities which transfer to it or permit the old scheme to be disadvantaged by the terms of transfer.

Equally unless the PPF is satisfied that the scheme data is up to date and accurate, it will require the transfer terms to incorporate a requirement for a true up mechanism.

This will allow a recalculation of the transfer value in the event it is discovered that there is a material error in the transfer liability valuation.

3.4

Asset split

When assets are split between the schemes, the principles for splitting those assets need to ensure equity between the two schemes both in respect of the asset classes and the costs of transition.

A proposal should therefore not proceed on the basis that the Successor Scheme's asset allocation takes priority.

If a mutually acceptable asset split cannot be agreed, all classes of assets will be split pro-rata.

3.5

Costs

In a successor scheme transactions, in addition to those costs identified in the Restructuring Guidance, the costs to be borne by the company shall, without limitation, include:

- all the costs associated with Successor Scheme including but not limited to set up costs, member communications about the option to transfer to the Successor Scheme, actuarial, investment and accountancy costs necessary to implement the transaction;

3. Principles Applying to Successor Scheme Restructurings continued

- the cost of providing independent financial advice to scheme members where deemed necessary by the PPF or TPR; and
- the costs of the old scheme's assessment period.

3.6

Benefit design

Whilst the benefit design for the successor scheme is primarily a matter for the company and trustees, the PPF considers that members ought to be no worse off if they take the opportunity to move to the successor scheme.

Whilst the PPF recognises that there will remain a risk for the members as to whether the Successor Scheme will ultimately be able to provide scheme benefits at a higher level than PPF benefits, it must be demonstrated that appropriate steps have been taken to ensure this is the case. This is likely to be through a mix of benefit design in the successor scheme (including consideration of underpins or guarantees that members will get at least what they would from the PPF) and the provision of appropriate information, support and independent professional advice when being asked to make sometimes complex choices about their financial futures.

3.7

Scheme support

It is generally anticipated that any proposal for a successor scheme restructuring should involve a substantive employer to support the scheme. The PPF is mindful when considering restructuring proposals that it will not agree to restructuring proposals that would permit transfers to a successor scheme where it cannot be shown that the employer will continue to profitably trade and the successor scheme will provide a viable alternative to the PPF. This has unfortunately proved ultimately to be the case in some successor scheme transactions whether or not those involved a PPF restructuring. Proposals for successor schemes without a substantive sponsor would be exceptional, and would only be acceptable if as a minimum they met TPR and PPF requirements for funding and ongoing governance.

4. Conclusions

4.1 The PPF will work closely with the trustees and TPR to minimise the risk to scheme members and the PPF.

4.2 The PPF is always concerned to ensure no precedents are set that would permit transfers to a successor scheme where it cannot be shown that the successor scheme will provide a viable long term alternative to the PPF.

4.3 The PPF expects that the parties will instruct their financial, legal and actuarial advisors to report on the areas of concern set out in this guidance. Accordingly employers, the actuaries, other advisors and IPs should factor in sufficient time to allow for the completion of that work.

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Please note this leaflet seeks to assist stakeholders and insolvency professionals on our approach to restructuring and insolvency cases. It is an accompaniment to existing publications from the PPF published on our website, not a substitute. We encourage restructuring & insolvency practitioners and trustees to seek appropriate, specific case guidance.

See **www.ppf.co.uk** for further information.

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