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Apportionment Arrangements

Ways of Dealing with Section 75 Debt

Actuaries and the Law

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Apportionment Arrangements

Ways of Dealing with Section 75 Debt

Denise Fawcett, Partner
Julian Richards, Solicitor
Pitmans LLP



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Background

- The Occupational Pension Schemes (Employer Debt) Regulations 2005
- Made under sections 75 and 75A of the Pensions Act 1995
- Introduced to ensure that employers stand behind the funding of occupational schemes
- Amended in 2008, 2010 and 2012, primarily to introduce greater flexibility.

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Relevant Provisions

Alternatives to triggering a section 75 debt

- Approved withdrawal arrangement
- Withdrawal arrangement
- Scheme apportionment arrangement
- Flexible apportionment arrangement
- Regulated apportionment arrangement

Approved Withdrawal Arrangements

- Regulation 7
- Approved Withdrawal Arrangement Share
- Regulator approval required
- Funding test
- Approval based on “reasonableness test”
 - Potential effect of employment cessation event
 - Financial circumstances of the proposed guarantor
 - Amount of cessation employer's liability share
 - Relevant transfer deduction
 - Security of member's benefits
- Clearance?

Withdrawal Arrangements

- Regulation 6C
- Regulator approval not required
- Withdrawal share
 - Employer's share of the shortfall on a scheme funding (not buyout) basis
- Funding test
- Assessment of Guarantor
- Advantages of costs?
- Clearance?

Scheme Apportionment Arrangements

- Regulation 6B
- Must be provided for in the scheme rules
- Trustees consent
- Funding test
- Provides for payment of scheme apportionment arrangement share rather than liability share
- Apportions all or part of the difference to remaining employer(s)
- Fixed or floating obligation
- Clearance?

Flexible Apportionment Arrangements

- Regulation 6E
- Introduced to ease corporate restructuring
- Allows apportionment of an employer's scheme liabilities instead of its share of the debt
- Funding test
- Scheme not in a PPF assessment period or being wound up
- Understanding the differences to a scheme apportionment arrangement
- Clearance?

Regulated Apportionment Arrangements

- For phoenix type situations
- Scheme apportionments – can't satisfy Funding Test
- PPF driven

Corporate Rescue and the PPF

Options for Distressed Corporates

- Insolvency options
- Non-Insolvency options

Options for Distressed Corporates

Insolvency Options – PPF Entry

- Hive off debt
- Company Voluntary Arrangement
- Administration
 - PPF deal terms apply
 - tPR Clearance

Non-Insolvency Options

- Compromise Debt
 - Could lose PPF eligibility
 - tPR Clearance

Mergers and Sales of Companies in Group, General Restructuring

- Consider whether tPR clearance required

Insolvency Options for Distressed Corporates

- Salvageable business
- Willing investor/Company funds available/Bank support
- PPF Entry for scheme
- PPF deal terms
- tPR clearance
- Trustee Agreement

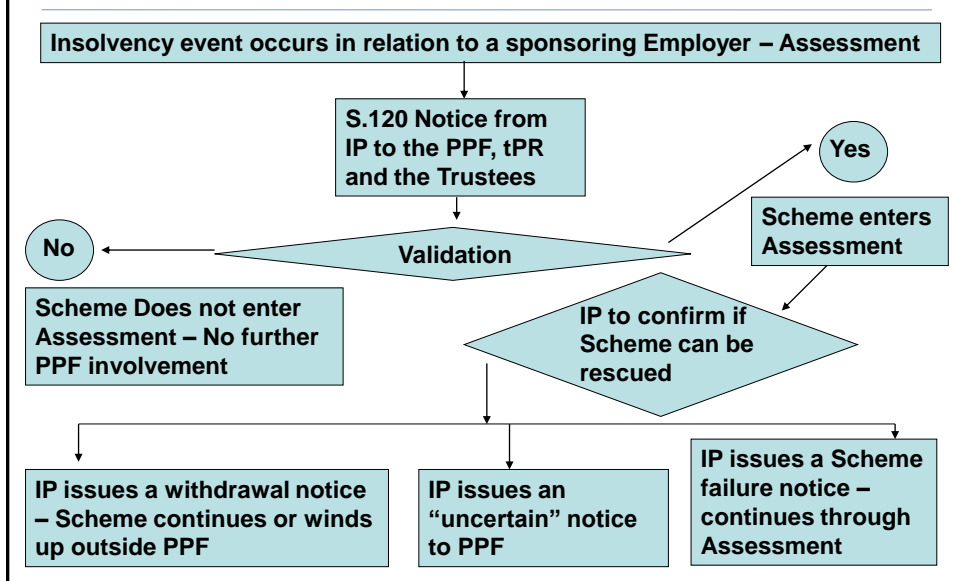
PPF Entry

- PPF assessment period arise where:
 - Eligible scheme
 - Employer/employers insolvent
- Insolvency
- No “scheme rescue”
- Section 143 valuation
- Formal transfer/scheme wind-up
- Assessment period

PPF Entry

- Single employer scheme
 - Last employer of actives
- Multi-employer scheme
 - All current employers plus
 - All former post April 1997 employers UNLESS
 - Section 75 debt paid in full
 - Section 75 debt compromised and paid in full
 - Section 75 debt written off
 - No section 75 debt arose

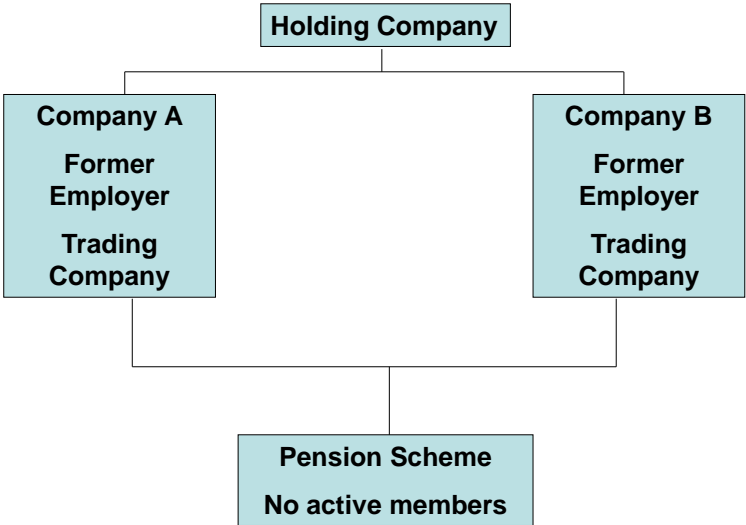
Key Stages



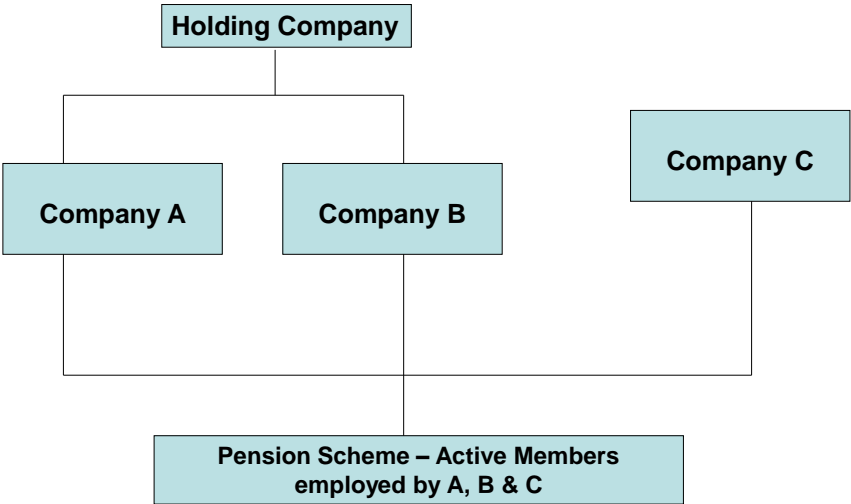
Options

- Debt Hive Off
- Administration
- Company Voluntary Arrangement

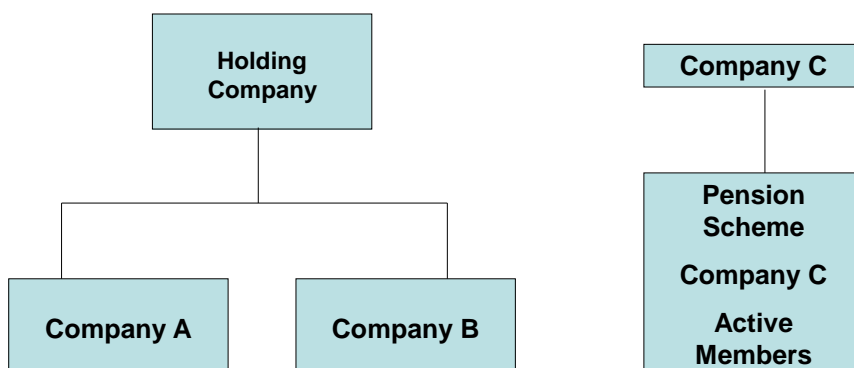
Debt Hive Off Initial Structure



Debt Hive Off Adhering New Employer



Debt Hive Off Final Structure



Mechanics

- Discussions with the tPF/PPF
- PPF deal terms agreed
- Clearance granted
- Newco incorporated (C)
- Newco adhered
- Scheme reopened. At least one active member for each of the 3 companies.

Mechanics

- Regulated Apportionment Arrangement with Trustees – Debts of employers (A and B) reapportioned to retain £[Agreed]. Balance of dormant company C.
- Debt triggered and A and B pay Section 75 Liability
- Liquidation of Newco
- PPF Entry
- Shareholding to PPF
- Loan Notes?

PPF Deal Terms

Deal Criteria

- Is insolvency inevitable?
- No other options
- Is the proposed outcome for the Scheme “demonstrably better” than through an insolvency process?
- Is it fair – consider other stakeholders
- An “anti-embarrassment” equity stake in the on-going business.
 - No “new money” 33%;
 - Only “new money” 10%; or
 - Pro rata if there is a mix of new and old money.

The Pensions Regulator's Considerations

- tPR believes that the arrangement proposed will result in a higher level of funding for the scheme than if an insolvency event occurred in relation to an employer
- tPR has considered other relevant matters including
 - The likelihood of insolvency event not occurring in relation to the employer;
 - The financial effects of the proposed arrangements for the employer, including effects on creditors and shareholders.
- No Contribution Notice of Financial Support Direction possible

Trustee's Consideration

- The Trustees must be agreeable
- The trustees must be aware that there is a reasonable likelihood of an assessment period commencing in the following twelve months
- The Trustees must ensure perfect Section 75 exit
- PPF Valuation
- Self Investment

Employer Considerations

- Why?
- Cost and affordability
- Replacement benefits
- Pensions/Employment consultation

Corporate Recover and the PPF

- Rescue structures are available
- PPF actively broking deals
- Technically complex transactions

Questions or comments?

