PPF Levy Determination for the Levy Year starting 1st April 2015:

Action required in respect of Last Man Standing schemes

BRIEFING
JANUARY 2015

A. INTRODUCTION

1. Following the publication of the Pension Protection Fund's (**PPF's**) Levy Determination for the 2015/16 financial year (**Determination**), the rules of some pension schemes will require an amendment to ensure that they may still be categorised as a Last Man Standing (**LMS**) scheme for levy reduction purposes.

2. For a scheme to be categorised as a LMS scheme, the Determination requires that:

   2.1 the rules of the scheme do not contain any requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer; and

   2.2 it is confirmed to The Pensions Regulator (**tPR**) by 29th May, 2015 that legal advice has been provided to the trustees to confirm that there is no such requirement or discretion in the scheme rules.

   Note: Slaughter and May will be able to provide this advice if appointed by the trustees in accordance with the requirements of Section 47 of the Pensions Act 1995.

B. AMENDMENTS LIKELY TO BE REQUIRED FOR SCHEMES THAT ARE ON SLAUGHTER AND MAY'S MODEL TRUST DEED

1. Schemes which use Slaughter and May's model trust deed and rules will usually include a provision that, on the cessation of participation of an employer, the principal employer can direct the trustees to partially wind-up the scheme.

   Note: This will be viewed as a "*requirement or discretion for the trustees to segregate assets*" and will prevent the scheme from being categorised as LMS for the purposes of the Determination.

2. It was previously confirmed to Slaughter and May by tPR that the scheme returns of schemes on our model trust deed and rules should be completed on the basis that they were a LMS scheme.

3. However, paragraph 3.4.1 of the 2015/16 Policy Statement published on 18th December, 2014 states that:

   "*Our last Policy Statement announced our new requirement for Last Man Standing (LMS) schemes. For the 2015/16 levy year, we will require them to confirm that they have legal advice confirming their structure. Accordingly after 31 March 2015, all schemes that have been classified as LMS on their scheme returns will receive an email from the Pensions Regulator (tPR), requiring them to confirm that they have received 'Appropriate Legal Advice' from an 'Appropriate Solicitor', confirming that the current scheme rules do not contain any requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer.* ***This will make clear that where Trustees can be required to segregate assets at the option of another party, that this test is not met***."

   Comment: The final sentence of this quote is not contained in the Determination itself and nor was it included in the draft Policy Statement or consultation documents published prior to the Determination.

4. Given the comments contained in the policy statement set out at **3** above, schemes using Slaughter and May's model trust deed which give the trustees the power to partially wind-up the scheme on the principal employer's direction, will need to be amended to remove this power.

C. TIMING

1. The confirmation of legal advice will not need to be provided to tPR until 29th May, 2015. However scheme returns will need to be completed by 31st March, 2015 to state whether the scheme is a LMS scheme.

2. It will therefore be necessary to draft and execute deeds of amendment to remove any requirement or discretion for the trustees to partially wind-up the scheme prior to 31st March, 2015.

D. CHANGES TO THE 10% LEVY DISCOUNT FOR LAST MAN STANDING SCHEMES

1. It is also important to note that schemes categorised as LMS will not receive the flat-rate 10% levy discount applied under previous levy determinations.

2. The revised scheme structure factor (**SSF**) takes account of the dispersal of members, so that the more dispersed the membership is across participating employers, the closer the SSF will be to the existing SSF of 0.9.

3. This means that, even when a scheme is categorised as LMS, the levy reduction applied may be between 0% and 10%, depending on the concentration of membership across the participating employers.

E. NEXT STEPS

1. In terms of next steps:

   1.1 if you consider that your pension scheme contains a provision for the trustees to partially wind-up the scheme following the cessation of participation of an employer, and

   1.2 you still want the scheme to be categorised as a LMS scheme for the 2015/16 financial year

   please contact the person at Slaughter and May you deal with on pensions matters as soon as possible.

2. If a deed of amendment is needed, the deed of amendment must be approved and signed by all parties prior to 31st March, 2015.

Slaughter and May (PFJB/AJXW)
19th January, 2015

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