

## PPF Restructuring & Insolvency Team – Guidance Note 4

### Company Voluntary Arrangements

#### 1. Background

- 1.1. This guidance sets out the approach adopted by the Pension Protection Fund (“PPF”) to company voluntary arrangements (“CVA”).
- 1.2. When an employer (or all employers in the case of a last man standing scheme) lodges a CVA proposal in Court, a PPF Assessment Period will commence. The PPF will acquire the trustees voting right under S137 of the Pensions Act 2005.
- 1.3. CVAs can be used to achieve a corporate restructuring in a number of ways, dealing with the liabilities of the company as a whole or focusing on one particular class of creditor that pose a significant risk to the ability to continue to trade.
- 1.4. The PPF approach will depend on the purpose that the CVA is trying to achieve. All decisions are made on the facts pertaining to the specific case. We consult with The Pensions Regulator (“TPR”) on all cases.
- 1.5. The PPF will normally vote in favour or against a proposal rather than abstain from voting.

#### 2. PPF Practice – situations affecting all creditors or just the pension scheme

- 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 i.e. there is no prospect of a scheme rescue notice being issued.
- 2.2. In order to vote in favour of a proposal, we expect all employers and their advisors proposing a CVA to comply with these principles.
- 2.3. The proposals must clearly demonstrate that the company is insolvent.
- 2.4. The detailed principles are set out in our guidance entitled “The PPF Approach to Employer Restructuring” which is available on our website: ([http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Restructuring\\_and\\_Insolvency.pdf](http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Restructuring_and_Insolvency.pdf) ).  
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 scheme should receive “anti-embarrassment” equity in the employer, which given that existing shareholders remains involved will be at least 33%. The PPF will expect this to increase above 33% depending on where value breaks in the current balance sheet and the amount of new funds being introduced.
  - Creditors are being treated equitably and the scheme is not being disadvantaged. In particular we look at connected and intra-group creditor positions.
  - All costs incurred by the scheme will be paid by the company including legal and financial advisor fees.
- 2.5. TPR is not a direct counterparty in a CVA request unless clearance is requested. However, we will discuss all CVA requests with TPR, who will assess them

against their published Regulated Apportionment Arrangement principles available on their website:

(<http://www.thepensionsregulator.gov.uk/docs/regulated-apportionment-arrangements-statement-august-2010.pdf>).

PPF agreement to a CVA does not imply clearance from TPR and, in the absence of their having provided clearance, their Anti Avoidance powers would remain available to them.

### **3. PPF Practice – situations where the pension scheme is to be rescued and remains whole**

3.1. At face value it may appear that the pension scheme is unaffected in this situation. However this is not necessarily the case:

- The CVA insolvency must mean that the employer covenant is weaker, at least in the short term, compared to the last valuation and accordingly deficit contributions are likely to be too low.
- Addressing a single issue, usually related to property, is not likely to provide an overall solution for the employer. The history of these proposals shows that a significant majority are not successful in the medium to long term. During the period of the CVA, the pension deficit may grow and there may be an increase in the liability to the PPF primarily as a result of annual pension increases and members reaching normal retirement age (this is known as “PPF Drift”).
- The position of other creditors and their treatment following the CVA will be considered to assess the likely impact on the scheme and the equitability of treatment. Banks will generally have defaults triggered by a CVA, whether or not their position is directly impacted. We will consider the likely post-CVA positions of other creditors and will require equitable treatment for the scheme.

**3.2.** Additionally when deciding whether to vote in favour of the CVA, the PPF will consider the risk that the scheme presents to the PPF (separate from the scheme members) and whether that risk is adequately addressed by the CVA proposals.

**3.3.** In these circumstances, in order to vote in favour of a proposal we expect all employers and their advisors proposing a CVA to show how they have addressed the following issues:

#### **3.21 Restructuring plan**

- Do the employer’s proposals have a reasonable prospect of being successful?
- Do the proposals reflect the current market/industry circumstances?
- Have appropriate sensitivities been applied to the plan and can any downside risk be absorbed?
- Do the proposals fully address the issues facing the business or are more radical changes needed?
- In summary, is there a viable business going forward capable of supporting the scheme?

#### **3.22 Management**

- Does the management team have the right level of experience & expertise to deliver the plan?
- Are they sufficiently independent of any wider group influence?
- Have they been responsible for the employer’s current situation?

### 3.23 **Working capital & restructuring finance**

- Are there sufficient committed working capital facilities?
- How will sensitivities to the forecast be managed within the cashflow and how much headroom remains?
- Is there sufficient funding/equity to deliver the restructuring proposals?
- Is any equity raising achievable in the current situation and marketplace?

### 3.24 **Bank financing**

- Is the bank receiving any acceleration in its repayment profile or substantive increase in margin or remuneration?
- If secured debt is being repaid/reduced, what scope is there for the pension scheme to obtain second ranking security as it becomes available to support the deficit?

### 3.25 **Deficit reduction contributions ("DRCs")**

- Are all DRCs paid up to date?
- What risks to the DRCs plan does the CVA pose?
- How will the risks be mitigated?
- Should the trustees instruct a new valuation at this point and agree a new schedule of contributions?

### 3.26 **Employer dividends**

- Are any dividends forecast to be paid in the foreseeable future?
- What steps are proposed to ensure that the scheme receives comparable amounts?

### 3.27 **PPF drift**

- What is the quantum of PPF drift?
- What mitigation is being provided in addition to DRCs to protect against PPF drift?

### 3.28 **PPF levy**

- What is the anticipated PPF levy during the period of the CVA proposal?
- What proposals are included to ensure that the scheme is not exposed to levy payment contributions for the duration of the CVA?

### 3.29 **Pension Scheme de-risking**

- What level of risk is inherent in the investment strategy of the pension scheme?
- What steps are being taken to de-risk the pension scheme to reflect the additional risk to the scheme of the CVA process?

### 3.210 **Exit route protection for the pension scheme**

- What is the possible or likely exit route for finance providers and/or equity?
- If refinancing or sale through a hedge fund, private equity provider or similar is envisaged, what protections are being included to ensure the current level of recovery for the scheme and position in the repayment waterfall are at least being preserved?

### 3.211 **Preservation of contributions prior to scheme rescue notice binding**

- Under the pensions legislation no further contributions to the scheme are permitted once an assessment period commences i.e. once a CVA proposal and nominees report is lodged in Court. This includes DRCs. Where the intention is for the scheme to continue following the completion of the CVA, it is important that DRCs due continue to be made available to the scheme whether or not the proposals are approved.
- Documentation to facilitate this is available from the PPF.

## 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 that no precedents are set that would permit any schemes to be weakened where there is a possibility of PPF entry in the foreseeable future. This has unfortunately proved to be the case in many of the CVAs in the recent past.
- 4.3 The PPF expects that trustees will instruct their financial 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 and access to relevant company staff & advisors to allow for the completion of that work.

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