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sackers extra

Pensions law – the week in review

5 October 2009

AT A GLANCE

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1 LEGISLATION

1.1 Companies Act 2006

The Companies Act 2006 came into full force on 1 October 2009.

The Act is aimed at simplifying and consolidating company law, drawing together existing requirements relating to the operation of companies, and introducing some new ones. It is designed to give private companies greater flexibility to choose how they operate, with the aim of ensuring that company law "reflects the modern business world".[1]

[1] Department for Business, Enterprise and Regulatory Reform leaflet: "The Companies Act 2006 - Updating you; updating your clients"

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Changes in force this month which are relevant to pension scheme trustee companies include:

- a new style memorandum, which will provide a snapshot in a prescribed form of a company as at its formation date (i.e. details of its name, number and subscribers), whereas previously a company's constitution has been divided between its memorandum (setting out the company's objects) and its articles of association (governing its internal workings);

- unlimited objects for new companies established on or after 1 October 2009. Existing companies' objects will be deemed to form part of its articles and will continue to restrict its activities, unless its objects are removed by special resolution. However, continuing to limit a trustee company's objects - primarily to acting as pension scheme trustees - could help narrow the scope of the statutory duties imposed on its directors and keep them consistent with the trustee company's purpose;

- default model articles for new companies, unless tailor-made ones are expressly adopted (and registered) in their place. Existing companies' articles of association will still apply, unless new articles are adopted by special resolution and registered;

- the possibility for new and existing companies to "entrench" certain provisions in their articles (either on incorporation or by agreement of all the company members) so that they can only be changed if specified conditions are met, or procedures followed; and

- the need for all directors to file with Companies House both a private residential address and a service address (which could be the company's registered office). Going forward, only the service address will appear on the public register. (Addresses already filed will generally remain on the register.)

For more information, please see our Sackers Extra News: The Companies Act 2006 - The Last Chapter.[2]

Further information is also available from the Department for Business, Innovation and Skills (BIS) - please click on the link below for their press release on the Companies Act:

BIS Press Release

2 GOVERNMENT ACTUARY'S DEPARTMENT (GAD)

2.1 Annual report published for 2008/09

GAD has published its annual report, which covers the period from 1 April 2008 to 31 March 2009.

As principal provider of actuarial advice to all parts of the UK Government and UK public bodies, GAD advises on pensions policy, social security and other actuarial matters. Among its projects which are highlighted in this latest annual report, GAD notes that it has:

- advised the Department for Work and Pensions (DWP) on the extensions to the Financial Assistance Scheme (FAS) which were initially announced in December 2007;
- advised the DWP on a number of private pensions policy issues, including reforms to contracting-out and employer debt legislation;
- provided input for the Pensions Regulator's Trustee toolkit;
- supported the Pension Protection Fund (PPF) on the development of appropriate methodologies to adapt actuarial valuation results to meet the PPF's requirements; and

[2] Available from the client area of our website or from your usual Sackers contact

- launched a new team specialising in advice on transfers of staff from public sector schemes under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as well as on internal "machinery of Government" transfers, in compliance with the Government's Fair Deal policy.

GAD's annual report can be accessed by clicking on the link below:

http://www.gad.gov.uk/Documents/Annual%20Reports/GAD_Annual%20Report%202008_09.pdf

3 HM REVENUE & CUSTOMS

3.1 Occupational and Personal Pensions: Statistics

HMRC has published statistics on personal and occupational pension schemes including:

- overall details of employer and employee contributions to personal pension schemes;
- details of pension scheme surpluses in self-administered schemes;
- methods used for reducing surpluses in self-administered schemes; and
- the cost of tax reliefs for registered pension schemes.

The pensions statistics can be accessed by clicking on the links below:

http://www.hmrc.gov.uk/stats/pensions/menu.htm

http://www.hmrc.gov.uk/stats/pensions/menu-by-year.htm

4 PENSION PROTECTION FUND (PPF)

4.1 2010/11 Levy package announced

On 30 September 2009, the PPF reaffirmed its commitment to keep the pension protection levy stable for three years when it confirmed that the 2010/11 levy will remain at £700 million, indexed to wages (£720 million).

The PPF also announced plans to:

- reduce the cap on its risk-based pension protection levy to 0.5%, in a bid to "further ease the burden on more hard-pressed schemes". The PPF estimates that this move will help protect 10% of schemes which pay the PPF levy - up from the 5% of schemes protected under the previous cap of 1%;
- reduce the levy scaling factor (the mechanism used to calculate individual bills) for 2010/11 to 1.64 (representing a reduction from 2.22 for 2009/10), in the light of the decline in scheme funding during 2008/09. The final scaling factor will be confirmed later this year; and
- publish a consultation on proposals for the 2011/12 levy, in particular refinements to the Dun & Bradstreet (D&B) scoring methodology, in November 2009.

These announcements were made in the PPF's consultation document on the 2010/11 pension protection levy, which accompanies a draft of the PPF Board's determination (which governs how the levy is calculated each year and is an annual requirement under section 175 of the Pensions Act 2004). The determination this year has been redrafted (rather than simply updated as in previous years), in a move which is designed to make the structure more navigable and "to the extent possible in a set of technical rules - to introduce more user-friendly language".

Alongside the consultation and draft determination, the PPF published updated drafts of each of the standard form contingent asset agreements, including those for group company guarantees, security over real estate and letters of credit / bank guarantees.

The consultation on the PPF's proposals will close on 11 November 2009.

The PPF's press release, consultation document, draft determination and draft updated guidance can be accessed by clicking on the links below:

http://www.pensionprotectionfund.org.uk/News/Pages/details.aspx?itemID=127

http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/2010-11_levy_Consultation.pdf

http://www.pensionprotectionfund.org.uk/levy/1011_determination/Pages/10-11Determination.aspx

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