

# alert

## CONTINGENT ASSETS: HURRY WHILE STOCKS LAST!

### 1 INTRODUCTION

This year's New Year sales may look set to run and run, but for schemes to see a reduction in their 2009/10 levy they need to submit their pension protection levy certificates to the Pension Protection Fund's (PPF) contingent assets "store" by 5pm on 31 March 2009.

In this Alert, we look at the process for certifying / re-certifying contingent assets and highlight the main PPF deadlines which trustees and employers should have in their diaries this spring.

### 2 KEY POINTS

- Schemes which already have contingent assets in place will not receive re-certification reminder notices this year.
- Certification / Re-certification (as appropriate) of all contingent assets must be done via the Pensions Regulator's Exchange system (Exchange) by 5pm on 31 March 2009.
- In addition, hard copy documents supporting contingent asset certificates must be delivered to the PPF by 5pm on 31 March 2009.
- Important notice requirements need to be complied with when amending current contingent assets (see section 5).

### 3 PPF LEVY – A QUICK REMINDER

The PPF's main function is to provide compensation to members of eligible defined benefit pension schemes, when there is a qualifying insolvency event in relation to the employer, and where there are insufficient

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assets in the pension scheme to cover the PPF level of compensation. PPF compensation is funded partly by the assets of the schemes for which the PPF assumes responsibility, and partly by an annual levy raised from potentially eligible schemes, the PPF levy.

The PPF levy is divided into two main parts:

- the scheme based levy, which takes account of the level of a scheme's liabilities relating to its members; and
- the risk based levy, which takes account of the funding level of a scheme and the risk of its sponsoring employer becoming insolvent.

## **4 CONTINGENT ASSETS**

Schemes can submit information which may affect their levy calculation to the PPF (via Exchange) by means of a voluntary certificate. In respect of the 2009/10 levy year, certificates can be given in respect of contingent assets, deficit reduction contributions<sup>1</sup> and "full block transfers"<sup>2</sup>. Partial block transfers that took place on or before 31 March 2008 will be carried forward for use in the 2009/10 levy, provided they were correctly certified by the 2008/09 deadline<sup>3</sup>.

The PPF will recognise the following types of contingent assets in the levy calculation for 2009/10:

- Guarantees given by parent / group companies and undertakings (Type A);
- Security over cash, real estate and securities (Type B); and
- Letters of credit and bank guarantees (Type C).

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<sup>1</sup> Special contributions paid into a scheme since the last actuarial valuation to reduce any deficit

<sup>2</sup> Such certificates would confirm that 100 per cent of assets and liabilities have been transferred out of the scheme

<sup>3</sup> For further information please see our Sackers Extra Alert, "PPF Risk-Based Levy – 2008/09 Determination" dated 22 February 2008

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### **5 RE-CERTIFICATION**

Where a contingent asset has been recognised for the purpose of the 2008/09 risk based levy, trustees must re-certify that contingent asset if it is to be taken into account for levy year 2009/10. However, the PPF is not sending out re-certification reminder notices this year so it is imperative that those wishing to re-certify their current contingent assets take note of the deadlines and start the process soon.

Re-certifications must also be carried out via Exchange, which should contain a pre-populated form with a scheme's existing contingent asset information already set out. If it does not, trustees should complete a blank certificate.

#### *Have any changes been made?*

If a contingent asset has been amended it may not be possible for it to be re-certified. Only certain changes, such as the addition of further employers in the list of entities whose liabilities are being guaranteed, can be made via the re-certification form<sup>4</sup>.

Employers should be aware that, except in respect of type C assets, under the terms of the PPF standard form agreements it is necessary to give pension scheme trustees at least 30 (but no more than 45) days' notice of any proposal(s) to amend a contingent asset. The notice period ends on the date that the proposals would be implemented. The PPF appears to be comfortable with the idea of the trustees and the company agreeing shorter notice periods in some cases, but you should seek advice before relying on this as the position is not set in stone.

Therefore, if contingent asset changes have been made or are intended, advice should be sought as to the correct procedure.

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<sup>4</sup> Full details are contained in the re-certification form



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## 6 DEADLINES

The deadlines for submission of pension protection levy certificates on Exchange are:

- 5pm on 31 March 2009 for certification / re-certification of contingent assets (the documents required in hard copy must still be submitted to the PPF by the same deadline);
- 5pm on 7 April 2009 for certification of deficit reduction contributions;
- 5pm on 7 April 2009 for notification of basic information in relation to full block transfers to be included in the 2009/10 levy and partial block transfers to be included in next year's (2010/11) levy; and
- 5pm on 30 June 2009 for the provision of the remainder of the required information in relation to full block transfers to be included in the 2009/10 levy and partial block transfers to be included in next year's (2010/11) levy.

Schemes should note that it is the PPF's general policy to enforce these deadlines strictly.

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