Group Briefing

Spring 2017

Pensions Update

1. PENSIONS AUTHORITY

1.1 The Pensions Authority publishes guidance document on investment issues for trustees of defined benefit schemes

The Pensions Authority (the "**Authority**") has published guidance on good practice in setting the investment strategy of a defined benefit ("**DB**") scheme. The Authority requires that every DB scheme has an investment strategy on how to invest the assets of a scheme in order to be able to pay scheme benefits. Once the investment strategy has been set by trustees, it may then be used to form the basis of the strategic asset allocation of their scheme.

» ***General principles***

In summary, the Authority advises that when considering their investment strategy, trustees should bear in mind the following:

- an investment strategy decision should follow a structured process –setting an investment strategy is one of the most important responsibilities of pension scheme trustees. Trustees should ensure they allow adequate time to set the investment strategy and follow a structured process in doing so;
- trustees should seek professional advice when deciding their strategy, however the decision is theirs alone. The Authority highlights the distinction in role between trustees (to make decisions) and advisers (to provide trustees with the information needed to make decisions and the factors affecting those decisions);
- trustees may wish to consult the sponsoring employer when setting investment strategy – the decision is ultimately one for the trustees, although even where the trustees are not obliged to consult the sponsoring employer under the trust deed and rules, the trustees may wish to consult "as a matter of good practice";
- investment strategies must be specific and clear – this means avoiding subjective terms such as "reasonable" which can mean different things to different people. Further, setting specific investment strategies makes it easier to measure their success; and
- investment strategies should be reviewed every three years – this is despite the fact that most DB schemes have a long life span.

» ***Setting investment strategy***

The Authority notes that the ultimate challenge for trustees will be to balance the need for adequate returns with the ability of the DB scheme to tolerate risk. In setting the investment strategy, the Authority suggests considering the following matters (all of which are subject to the underlying requirements of the Investment Regulations):

- employer contribution rate and the target rate of return, two factors which are somewhat interdependent as one tends to drive the other;
- risk tolerance – including the ability of the scheme to absorb losses and recover from adverse events and assessment of the employer covenant. The Authority recommends carrying out such an assessment through meetings with senior management or monitoring the policies and actions of associated companies. While there is no one method for measuring risk, it is proposed by the Authority the trustees should adopt one that is in common use;
- consistency – once the matters above have been considered, the trustees need to consider whether the matters are compatible.
- strategic asset allocation – as a final step trustees should instruct their advisers to develop proposals setting out target allocations for the specific asset classes.

Trustees should consider if the scheme investment strategy is in line with the Pensions Authority's guidance.

1.2 Statement of Investment Policy and Principles Guidance

The Authority has also published guidance in relation to preparing and maintaining a Statement of Investment Policy Principles ("**SIPP**"). The Pensions Act requires all DB schemes with more than 100 (active and deferred) members to prepare a SIPP. The Occupational Pension Schemes (Investment Regulations), 2006 set out the information that a SIPP must include but this guidance sets out the views of the Authority in preparing and maintaining a SIPP. It is intended that trustees use the SIPP as a reference when making investment decisions and there is no limit as to what the trustees can include in the SIPP.

However the Authority notes that the SIPP should:

» be sufficiently specific to enable a third party, on reading it, to understand the asset allocation;

» not include undefined, subjective terms such as "*reasonable*" or "*acceptable levels of risk*";

» be reviewed every three years and more frequently where there is a change in investment policy that is inconsistent with the SIPP.

The Authority has published a sample SIPP. There is no requirement that a scheme SIPP be identical to the model SIPP published by the Authority. However, the model SIPP is a useful starting point and is indicative of the kind of information the Authority expects to see in a SIPP.

1.3 Summary of regulatory activity and plans for 2017

The Authority has released a summary of its regulatory activity for 2016 and plans for 2017. The focus of the Authority's regulatory compliance work in 2016 was to increase direct engagement with regulated entities. Misappropriation of pension assets continues to be an area of priority for the Authority. It is also suggested that further improvement is necessary relating to the quality of data being submitted to the Authority by registered administrators.

The Authority released eleven Codes of Governance ("**Codes**") for defined contribution schemes and a further two codes specifically in relation to defined benefit schemes. The purpose of these codes is to support trustees with guidance and information. The Authority expects to see increased use of the codes and guidance by trustees in 2017.

The Authority issued a draft report to the Minister for Social Protection at the end of January 2017 setting out recommendations for the reform of the supplementary funded private pensions system in Ireland.

The IORP II Directive is to be transposed into law by the deadline of 12 January 2019. It will result in more detailed requirements for the management, governance and supervision of Irish pension schemes. Further information will be issued in due courses by the Authority to assist Trustees to become compliant with IORP II.

The Authority will review the feasibility of amending the minimum funding standard and the establishment of a pension protection scheme. A report will then be delivered to the Minister for Social Protection.

2. LEGISLATION

2.1 The Pensions (Amendment) (No.2) Bill, 2017

The Pensions (Amendment) (No.2) Bill, 2017 (the "**Pensions Bill**") was recently introduced as a Private Member Bill by Willie O'Dea. The Pensions Bill was referred to Committee stage on 9 February 2017. Two other Private Member Bills in relation to pensions have also been introduced but neither of these have to date progressed. Each of those Bills seeks to introduce a debt on the employer regime whereby if a solvent employer attempts to wind up a defined benefit scheme in deficit, the employer must make good that deficit (although in the case of the Pensions (Amendment) Bill, 2017 the requirement is to ensure that the scheme is 90% funded on the minimum funding standard basis). This note focuses on the provisions of the Pensions Bill.

The Pensions Bill currently contains the following draft provisions:

» The right of members of a pension scheme (whether or not the scheme is solvent) to appeal the wind up of a scheme to the Pensions Authority where it is believed that "*any restructuring of the scheme may result in any category of such pension scheme members being treated in an inequitable manner*". The Pensions Bill also empowers the Minister for Social Protection to make regulations which provide the Pensions Authority with the necessary powers to "*prevent any category of such pension scheme members being treated in an inequitable manner*".

» It shall be "*illegal*" for a solvent company to wind up a pension scheme without the consent of the Pensions Authority. Where a solvent company decides to wind up a pension scheme and the value of the assets of the scheme is less than the amount of the liabilities of the scheme then the Pensions Authority will not grant permission for the wind up until the company pays the difference between the assets and the liabilities to the trustees. This amount will be treated at law as a debt on the employer.

  Where paying that amount would "*present a serious risk to the solvency of the employer*" the Pensions Authority may permit the employer to pay a reduced amount (but no less than 50% of the difference between the assets and liabilities) or give them a longer period (no more than 5 years) over which to make good the amount.

  The employer may appeal any decision of the Pensions Authority to the High Court.

» The Pensions Authority will be required to prepare a report on the feasibility of: (i) changing the statutory minimum funding standard for defined benefit schemes; and (ii) establishing a pension protection fund.

It remains to be seen whether the Bill is enacted in its current form or at all. The Pensions Bill has a number of further parliamentary stages to go through before it would be adopted as law and the Bill currently provides that it will be commenced on a day that is determined by the Minister (i.e. it does not automatically commence on being put on the statute book).

2.2 Financial Services and Pensions Ombudsman Bill (the "PO Bill")

The Irish Government has introduced draft legislation to amalgamate the offices of the Financial Services Ombudsman and Pensions Ombudsman. The draft legislation will also consolidate and update the legislation in relation to the role and functions of the Ombudsman, the Council and the consumer complaints procedure. It is not anticipated that the legislation will have any substantive impact on the service currently provided by the Pensions Ombudsman.

2.3 Finance Bill

The Finance Bill was enacted on 25 December 2016 and confirms the legislative changes required to implement this year's budget. From a pensions' perspective, there were no changes since the budget announcement on 11 October 2016.

2.4 Disclosure of Directors' Remuneration

The Companies Act 2014 requires that a company disclose, in the notes to its statutory financial statements, remuneration amounts – for both the current and the preceding financial year – in respect of persons who were, at any time during the financial year, directors of the company. The requirement to disclose directors' remuneration includes remuneration paid by a holding company (i.e. a parent) to trustee directors. This requirement will apply in relation to directors of a corporate trustee company where those directors are remunerated by a group company (i.e. where the shares in the corporate trustee are held by the principal employer and the principal employer remunerates the trustee directors). The auditor is required to disclose this information in the preparation of the financial statements for the trustee company.

2.5 Credit Assessment Process

The European Union (Occupational Pension Schemes Investment) (Amendment) Regulations 2016 (the "**Regulations**") were signed by the Minister for Social Protection on 20 December 2016. The Regulations give effect to an EU Directive, the purpose of which is to encourage investors to develop their own capacity for credit risk assessment rather than relying solely on credit ratings. The Regulations prescribe that the Pensions Authority shall monitor the adequacy of credit assessment processes of schemes and encourage, where possible, a reduction of reliance on credit ratings. The nature of any reporting by the Trustees to the Pensions Authority under these Regulations has yet to be prescribed.

3. REVENUE OPINIONS AND CONFIRMATIONS

On 26 January 2017 a general e-brief from the Revenue Commissioners ("**Revenue**") confirmed that it is now their policy that all opinions or confirmations issued by the Revenue are subject to a maximum validity period of five years, or such shorter period as they may specify. Any tax payer or tax practitioner who is seeking to rely on an opinion issued by Revenue prior to 1 January 2012 for any transaction after 1 January 2017 must provide evidence of the opinion or confirmation which originated from the Revenue to the Revenue and lodge an application for an extension or renewal of this opinion or confirmation with the Revenue. It remains to be seen how this will impact on discretionary practices relating to pensions where concessions may be relevant for periods considerably in excess of five years.

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